

GC9TPIC1

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 MICHAEL PICARELLA,

4 Plaintiff,

5 v.

14 CV 4463 (ALC)

6 HSBC (USA) SECURITIES, INC.,

7 Defendant.

8 -----x

New York, N.Y.
December 9, 2016
9:30 a.m.

10 Before:

11 HON. ANDREW L. CARTER,

12 District Judge

13 APPEARANCES

14 LIDDLE & ROBINSON LLP
15 Attorneys for Plaintiff

16 BY: JAMES R. HUBBARD
17 BLAINE H. BORTNICK
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19 Attorneys for Defendant

20 BY: RANDALL W. JACKSON
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21 GIBSON, DUNN & CRUTCHER LLP
22 Attorneys for Defendant

23 BY: GABRIELLE F. LEVIN
24
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1 (In open court, jury not present)

2 THE COURT: So the jurors are all here. We're going
3 to be ready to begin. I got a submission from defense counsel
4 last night. We can deal with that later.

5 Who is the first witness today?

6 MR. HUBBARD: Your Honor, the first witness is
7 Ms. Jang.

8 THE COURT: Okay. And then who is after Ms. Jang?

9 MR. HUBBARD: After Ms. Jang is -- I talked to
10 counsel, I think the next witness is going to be Mr. Silber.

11 THE COURT: Okay.

12 MR. HUBBARD: Then Mr. Descamps, followed by
13 Mr. Karam. There's a person on the list I mentioned to you
14 earlier, Ms. Malanga, she will be called by the defendants on
15 Monday.

16 THE COURT: Okay. And at least one of those witnesses
17 I believe was traveling from out of the country. Which one of
18 those is that?

19 MR. HUBBARD: Mr. Descamps.

20 THE COURT: So give me a sense of the time on the
21 examination of this first witness.

22 MR. HUBBARD: All are, except Mr. Karam, including the
23 first witness, are brief, direct 15 minutes, your Honor.

24 THE COURT: Okay. And what about the cross of these
25 witnesses?

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1 MR. JACKSON: Your Honor, we don't expect any of them
2 to be very long, at the most 30 minutes, I think, at the most,
3 excepting Mr. Karam. Mr. Karam is the longest of these. He
4 may be longer than that, but the first three that were
5 mentioned we're talking about 30 minutes perhaps, at the most.

6 THE COURT: Okay. I wanted to make sure that we will
7 go ahead, I wanted to kind of watch the time because the
8 witness who is traveling from out of town we want to make sure
9 we get that witness done today. Doesn't seem like it will be a
10 problem.

11 MR. JACKSON: We very much appreciate that, and I
12 think based on the current schedule we have no concern that
13 we'll get Mr. Descamps done.

14 THE COURT: All right. I'll bring the jury in and
15 greet them and we'll start.

16 Anything else that we need to address this morning?

17 MR. HUBBARD: No, sir.

18 THE COURT: Let's bring the jury in.

19 (Continued on next page)
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Jang Demian - direct

1 (Jury present)

2 THE COURT: Good morning. And welcome back. We are
3 going to continue with the case on trial, counsel, you may call
4 your next witness.

5 MR. HUBBARD: Thank you, your Honor.

6 Your Honor, we call Ms. Jang.

7 SUE JANG DEMIAN,

8 called as a witness by the Plaintiff,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HUBBARD:

12 Q. Good morning, Ms. Jang.

13 A. Good morning.

14 Q. Let me begin by asking you how you are currently employed.

15 A. I work in human resources at HSBC supporting global banking
16 and markets business.

17 THE COURT: Let me check and make sure the jury can
18 hear the witness okay.

19 Make sure you remember to lean into the microphone.

20 Q. I didn't get the last part, I didn't get the exact place in
21 human resources that you are now working.

22 A. I work for the global banking and markets business
23 supporting that division.

24 Q. All right. And today who is the senior executive in that
25 division, not human resources?

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Jang Demian - direct

1 A. But in the business?

2 Q. Yes.

3 A. Thierry Roland, who is the CEO of the Americas.

4 Q. Is he officed here in New York?

5 A. Yes.

6 Q. And in your human resources area, do you have any reporting
7 relationship?

8 A. That I report to?

9 Q. Yes.

10 A. My own personal report?

11 Q. Yes.

12 A. I report to Susan Roskell, who is the head of HR for global
13 banking and markets Americas.

14 Q. Is Ms. Roskell officed here in New York?

15 A. Yes.

16 Q. Let's go back a bit to the year 2012. Let me ask you where
17 you -- were you working in the human resources then?

18 A. The same.

19 Q. The same.

20 And at that time your direct report was not
21 Ms. Roskell, it was Ms. Weiss?

22 A. Correct, yes, Ellen Weiss.

23 Q. Ellen Weiss?

24 A. Mm-hmm.

25 Q. Did there come a time when Ms. Weiss asked you to

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Jang Demian - direct

1 investigate some complaints regarding Eileen Hedges that
2 Mr. Picarella had made?

3 A. Yes.

4 Q. Do you recall the time that that began?

5 Just roughly, we're talking about the year 2012, I
6 think, and maybe the month in that year, if you recall.

7 A. It was the beginning of that year.

8 Q. And you say the beginning of that year, do you recall
9 having had that assignment at any time before the first of
10 April?

11 A. I'm not sure of the exact dates but it was around April.

12 Q. I realize it's been some time.

13 Okay. How were you first contacted about working on
14 that complaint from Mr. Picarella?

15 A. I believe it was Ellen asking me to look into it.

16 Q. Okay. And what, if anything, did you do when she asked you
17 to look into it?

18 A. We discussed some of the feedback that she had received and
19 put together an outline of points to go over with Eileen.

20 Q. So do I understand what you're saying that when you
21 commenced your investigation you started by talking to
22 Ms. Hedges?

23 A. I spoke to Ellen. So Ellen received the information for
24 which she asked me to look into these items. She provided the
25 feedback that she received so I could look into it, then she

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Jang Demian - direct

1 asked me to have a discussion with Eileen.

2 Q. Do you remember when you had that discussion with
3 Ms. Hedges?

4 A. I have notes that has a date. I believe it was in April.

5 Q. How many times in the April, May, June time frame did you
6 talk to Ms. Hedges?

7 A. She was a business manager in the business that I
8 supported, so we did speak from time to time, work-related
9 items. I don't have a number of times.

10 Q. Did you make a written memorandum of that first discussion
11 with Ms. Hedges?

12 A. I did, yes.

13 Q. And it was in April?

14 A. I have the date on the notes that I put together. I'm
15 sorry, it's so long ago I didn't go back and memorize my dates
16 and notes.

17 Q. You haven't looked at it before coming here today?

18 A. I looked at it to refresh my memory but I didn't memorize
19 every date.

20 Q. And you think that was in April possibly?

21 A. Can you share the notes? If you could share the notes it
22 would have the date that I spoke to Eileen.

23 Q. The problem is I don't have them, but we'll get to that.

24 Did there come a time when Ms. Whang, W-H-A-N-G, did
25 some of that investigation for you or with you?

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Jang Demian - direct

1 A. There was a point in time where I had taken vacation.

2 We're required to take two weeks out of the office, and during
3 that time she stepped in for me.

4 Q. Did she do -- did she file the first written report, do you
5 think?

6 A. I am not sure.

7 Q. Okay. Let me have Exhibit PX-111.

8 THE COURT: Is that already in?

9 MR. HUBBARD: I believe it's in evidence.

10 THE COURT: Okay.

11 MR. HUBBARD: I'm checking now.

12 MR. JACKSON: No.

13 MR. HUBBARD: It's not. May I move 111?

14 THE COURT: Any objection to 111?

15 MS. LEVIN: No objection.

16 THE COURT: Okay. It's in.

17 (Plaintiff's Exhibit 111 received in evidence)

18 Q. You see at the top there, Ms. Jang, it says meeting notes
19 from June 28 meeting, Eileen Hedges and Jennifer Whang.

20 I asked her about the incident on the trading floor in
21 which she exposed her breast to Mike and Michelle Parker during
22 a conversation about her weight loss.

23 Do you believe that you talked to Eileen Hedges about
24 the complaints Mr. Picarella had made to Ms. Weiss back in
25 April before this?

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Jang Demian - direct

1 A. I believe this is notes from Jennifer's conversation when
2 she was filling in for me when I was out.

3 Q. My only question to you is before that you think you spoke
4 to her?

5 A. To Eileen?

6 Q. Yes.

7 A. I did, yes. This is after I had spoken to Eileen
8 initially.

9 Q. Let's see if we can find Plaintiff's Exhibit Number 1. I
10 think I found it.

11 Let's take a look at this.

12 THE COURT: Is plaintiff's 1 in evidence?

13 MR. HUBBARD: I don't think 1 is in evidence. May we
14 move Exhibit 1?

15 MS. LEVIN: No objection.

16 THE COURT: Okay, 1 is in evidence.

17 (Plaintiff's Exhibit 1 received in evidence)

18 Q. Monday, April 26, let's assume that's '12 for purposes of
19 our discussion.

20 A. Typo.

21 Q. Is this the report of what you believe to be the first
22 conversation you had with Ms. Hedges?

23 A. Yes.

24 Q. So you said at the top: Before I contacted Eileen she
25 asked me to meet to discuss the performance discussions she was

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Jang Demian - direct

1 having with Mike. These are notes of our discussion.

2 Right?

3 A. That's correct.

4 Q. She wanted -- she talks about aligning her expectations.

5 She was out for knee surgery. She said she didn't think his
6 coverage was as smooth as it should be.

7 Let's go to the second paragraph.

8 After discussing Mike's performance, you see you have
9 some other topics that you discovered that you covered with
10 her. Right?

11 A. Yes.

12 Q. And then do you recall when the next time is you spoke to
13 her?

14 A. The next time that I spoke to Eileen?

15 Q. Yeah.

16 A. As I mentioned, because she was supporting the sales
17 business, which was the area that I covered, we did speak from
18 time to time on various matters. So I don't know exactly when
19 I would have spoken to her next or what it was regarding. We
20 spoke about this on the day that is noted on the top of my memo
21 in April.

22 Q. What did you know in the April, May 2012 time frame about
23 Ms. Hedges' performance problems?

24 A. Well, she had indicated to me previously that she was
25 concerned about Mike's performance.

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Jang Demian - direct

1 Are you asking about --

2 Q. We covered Mike's performance. I'm asking you about her
3 performance.

4 A. Her work performance was considered to be good. It was
5 considered to be capable and knowledgeable of the business and
6 the various projects that they were working on.

7 Q. Do you know that Mr. Pizzimbono had moved her from the --
8 moved her off the 9th floor?

9 A. We moved floors all the time constantly.

10 Q. That was not my question.

11 Did you know that Mr. Pizzimbono had moved Ms. Hedges
12 away from his floor and changed her reporting relationship away
13 from him?

14 A. Away from Pablo?

15 Q. Yes.

16 A. Yes.

17 Q. Did you know that he was not satisfied with her performance
18 and wanted her out of the business?

19 A. In terms of her work performance --

20 Q. Can you just answer that yes or no?

21 A. Sorry, can repeat the question?

22 Q. Did you know Mr. Pizzimbono, in the spring of 2013, was not
23 satisfied of her performance and wanted her out of the
24 business?

25 A. 2013?

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Jang Demian - direct

1 Q. '12.

2 A. 2012. Again I'm not a hundred percent sure on dates, but I
3 would say behavior performance, yes.

4 Q. Let's go to PX-118 in evidence?

5 MR. HUBBARD: Any objection to 118?

6 MS. LEVIN: No objection.

7 THE COURT: 118 is in.

8 (Plaintiff's Exhibit 118 received in evidence)

9 MR. HUBBARD: Bring up 118.

10 Q. Looks like you had another discussion here with Ms. Hedges
11 on or about July 23, 2012.

12 A. Yes.

13 Q. Looks like -- I'm going to go through this quickly with
14 you. Can you see the screen okay?

15 A. I can, yes.

16 Q. There's a place at the top where you say something about
17 expenses, and then you go down to a meeting that took place a
18 year and a half ago, another reference to expenses.

19 Go down with me, there's a reference to a dinner with
20 Mr. Bottorff. Do you see that?

21 Okay. Then there's a place where you ask a question
22 about pulling Ms. Parker into somebody's office and asking her
23 to lie about the relationship with human resources. She
24 replied no.

25 Let's go to the second page, please.

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Jang Demian - direct

1 Looks like you write down the question at the top, and
2 it says: In Key Largo, did you ever encourage Michelle to
3 flirt with Eduardo Legoretta or tell her that she should sleep
4 with him?

5 Where did you get that question from? I realize it's
6 been some time.

7 A. I believe I had discussions with legal and my manager Ellen
8 at the time prior to this meeting, so that's -- I don't
9 remember who would have provided the question.

10 Q. Okay. You don't know whether it came from Ms. Parvis --
11 sorry, Ms. Parker or Mr. Picarella?

12 A. I don't remember.

13 MR. HUBBARD: PX-120, please.

14 It's not in, your Honor.

15 Any objection?

16 MS. LEVIN: No objection.

17 THE COURT: Okay. It's in.

18 (Plaintiff's Exhibit 120 received in evidence)

19 Q. These appear to be discussion notes between you and
20 Ms. Hedges on or about July 24, 2012.

21 In sum and substance you met with her that day, you
22 told her that she was being put on a final warning with respect
23 to her managerial responsibilities and she would no longer have
24 direct reports, and that there would be some counseling about
25 focusing on behavior and poor judgment, and her work

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Jang Demian - direct

1 responsibilities will be changed.

2 So at or about that time you recall that her
3 managerial responsibilities were removed from her --

4 A. Yes.

5 Q. -- plate?

6 Okay. How long did you -- would it be fair to say
7 that about this time your investigation of the -- of
8 Mr. Picarella's complaints that he made to Ms. Weiss pretty
9 much ended your involvement in that phase?

10 A. Yes.

11 MR. HUBBARD: Exhibit 97, please. I believe this is
12 this evidence.

13 Sorry, may I offer 97, your Honor?

14 THE COURT: 97 is already in.

15 MR. HUBBARD: Okay.

16 Q. This appears to be an email from you, Ms. Jang, to
17 Ms. Weiss on May 7, 2012. You seem to be reporting the
18 conversations you had with Mr. Pizzimbono.

19 A. Yes.

20 Q. At or about this time he told you that he wanted Eileen out
21 of the managerial role and is on borderline of saying out all
22 together.

23 A. Yes.

24 Q. By May 7, 2012, fair enough?

25 A. Yes.

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Jang Demian - direct

1 Q. Let's go to Exhibit 185, which I think is in evidence.

2 Let's go to the masthead. Let's -- this is an email
3 from you on April 22nd, 2013 at or about the time -- this is in
4 2013, sorry, April 22, 2013, and you send this to Ms. Weiss and
5 others, right?

6 A. It appears that way. I haven't seen this e-mail.

7 Q. And other employees on there are employees that work in the
8 human resources function?

9 A. Yes.

10 Q. And says action required PCC reporting Q1 2013, right?

11 A. That's correct.

12 Q. What is PCC reporting?

13 A. It would be personal conduct cases.

14 Q. Let's go down to the bottom, please.

15 Beginning with the email from Ms. Weiss, you see there
16 is an email from Ms. Weiss, looks like a list of these PCC
17 cases, right? See that?

18 A. Yes. I'm sorry, I'm reading because I haven't seen this
19 yet.

20 Yes.

21 Q. And there's some names down at the bottom, a couple of the
22 names are Hedges, Picarella, Goodwin, Legoretta, et cetera, on
23 the list, right?

24 A. Mm-hmm.

25 MR. HUBBARD: 216, please.

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Jang Demian - direct

1 THE COURT: I don't think 216 is in.

2 MR. HUBBARD: I don't believe it is.

3 Mr. Fitzgerald, wait to put it up.

4 Any objection to 216?

5 MS. LEVIN: No objection, your Honor.

6 THE COURT: It's in.

7 (Plaintiff's Exhibit 216 received in evidence)

8 Q. This is from you to Ms. Weiss, March 14, 2014. Now we're
9 up to looks like 2014. There's some names at the top, Cary
10 Parker, MP, JR.

11 Let's go down to the next one, please.

12 MR. HUBBARD: Is there anything else on the bottom of
13 that?

14 That's it, right?

15 Let me have, please, 219, please.

16 I think this is in evidence, your Honor.

17 Q. There's an email at the bottom from Ms. Weiss to you and
18 others dated 13 May 2014. The subject is restructuring. Do
19 you know what that restructuring refers to?

20 A. Yes.

21 Q. Did you know at the time these emails were written?

22 A. I'm sorry?

23 Q. Did you know at the time these emails were written what it
24 refers to?

25 A. Restructuring, yes.

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Jang Demian - direct

1 Q. What was going on in the restructuring area at this time?

2 A. Restructuring is general, could be reductions in force, it
3 could be looking at loan performers, it could be restructuring
4 of reporting lines, reductions in business, kind of general
5 restructuring could be anything.

6 Q. And you appear to be a recipient on the email list there?

7 A. Yes.

8 Q. And Ms. Weiss says: I haven't heard much on markets
9 restructuring other than the names below. Is there anyone else
10 that business wants to let go?

11 A. Yes.

12 Q. Let go to the top. Can we add MP?

13 When she asked you was there anyone else that business
14 wanted to let go, you responded: Can we add MP?

15 Right?

16 A. Yes.

17 Q. Did business want to let MP go?

18 A. At this time I was supporting the sales business, and I
19 knew that there was continuous concern on performance with
20 Mike, so that's why I would have said that to that question.

21 Q. Who in business had told you that they were concerned about
22 his performance to the point that they were considering firing
23 him?

24 A. The main senior manager that I supported was Pablo
25 Pizzimbono.

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Jang Demian - direct

1 Q. And he told you that, based on Mr. Picarella's performance
2 at that time, that he was considering terminating his
3 employment?

4 MS. LEVIN: Objection, your Honor.

5 THE COURT: Please rephrase the question.

6 Q. Mr. Pizzimbono told you at this time -- the reason you
7 wrote this is because Mr. Pizzimbono told you at this time that
8 he was considering terminating Mr. Picarella's employment,
9 correct, or not?

10 A. I don't recall a specific conversation, but we did talk
11 about performance.

12 Q. Did you make a regular practice of recommending the
13 termination of employees?

14 A. Ultimately HR doesn't make the decisions, but if there are
15 conversations that are taking place with managers in the
16 business, we -- it's not unusual that we would discuss it.

17 Q. And so at this point in time there were conversations in
18 the business about terminating Mr. Picarella's employment?

19 A. It wouldn't necessarily mean termination, but it would be
20 prompted by performance.

21 Q. Did you know what his last performance rating was before
22 you wrote this email?

23 A. I don't off the top of my head, no.

24 Q. If I told you it was three strong, would that refresh your
25 recollection?

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Jang Demian - direct

1 A. Highly likely. The majority of people are three strong.

2 Q. Let talk about that for a minute. So it's the bank's
3 practice to grade the majority of the employees in the business
4 as a strong?

5 A. Yes.

6 Q. Is there something wrong with that or is that something
7 that reflects that you have a competent work force?

8 A. I would say that we try to differentiate performance.
9 However, at the time I think in 2013 the rating scale that was
10 used at that time did have a very large population who was
11 rated as three strong, which made it difficult to differentiate
12 the group of people in that rating category.

13 Q. But to your knowledge, when a rating was assigned to these
14 employees, the word "strong" was put down by their name, right?

15 Yes or no.

16 A. Yes, strong is --

17 Q. I didn't ask that, I'm asking if the word "strong" was put
18 down by the rating number three.

19 A. Yes.

20 MR. HUBBARD: Thank you, nothing further.

21 Wait, I'm sorry, may I have just a moment?

22 (Pause)

23 MR. HUBBARD: May I ask one other question about
24 Exhibit 111?

25 THE COURT: Okay.

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Jang Demian - direct

1 BY MR. HUBBARD:

2 Q. Back to first line, there's a reference there to the breast
3 incident on the trading floor, the third sentence there,
4 Ms. Whang says Eileen had no recollection of this incident and
5 completely denied it ever happened.

6 And so when Ms. Whang made this memorandum as you were
7 conducting this investigation, you picked the investigation
8 back up, right?

9 A. Yes, I did.

10 Q. And what did you -- did you continue to try to determine
11 whether or not that had actually happened?

12 A. Yes.

13 Q. What did you find out?

14 A. She denied that it ever happened. She gave a similar
15 response to what she provided earlier, according to Jennifer's
16 notes.

17 Q. Did you ask Ms. Parker about it?

18 A. I never had any conversations with her, so my conversations
19 were directed with Eileen Hedges.

20 Q. At any time did the human resources function ever determine
21 that that allegation was true?

22 A. Not that I'm aware.

23 Q. Do you know whether or not that allegation or her conduct
24 was part of the reason that her -- that she was removed from
25 her management in the summer of 2013 -- in the fall of 2012 and

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Jang Demian - cross

1 then terminated in the spring of 2013?

2 MS. LEVIN: Objection.

3 THE COURT: Please rephrase the question.

4 Q. Do you know if the alleged incident on the trading floor,
5 the breast incident, was the basis of management's
6 determination to remove her management responsibilities in 2012
7 and to terminate her in 2013?

8 MS. LEVIN: Objection.

9 THE COURT: Can you rephrase the question, counsel?
10 Break that up a little bit.

11 MR. HUBBARD: Sorry?

12 THE COURT: Break that up a little bit.

13 MR. HUBBARD: Yes.

14 Q. Do you know if the allegation here in number one about her
15 exposing her breast on the trading floor was a basis of
16 management's decision to remove her management responsibilities
17 from her?

18 A. As far as I know, I don't think we were able to validate
19 the incident happening, so I am not sure the answer to your
20 question.

21 Q. By the end of July or so of 2012 you didn't continue to
22 investigate Ms. Hedges, did you?

23 A. Not really, no. During that time I had had the last
24 conversation with Eileen and put her on warning, and that
25 pretty much concluded my involvement.

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Jang Demian - cross

1 MR. HUBBARD: Thank you.

2 THE COURT: Any cross-examination?

3 MS. LEVIN: Yes, your Honor.

4 CROSS-EXAMINATION

5 BY MS. LEVIN:

6 Q. Good morning, Ms. Jang.

7 A. Good morning.

8 Q. Ms. Jang, how many years of HR related experience do you
9 have?

10 A. About 20 years.

11 Q. And how many years have you worked at HSBC?

12 A. Twelve and a half years.

13 Q. Have you investigated allegations of misconduct during your
14 career?

15 A. Yes.

16 Q. Approximately how many investigations have you been a part
17 of throughout your HR career?

18 A. I would say at least dozens, more, 50. It's hard to say.

19 Q. Does HSBC encourage employees to report misconduct?

20 A. Yes.

21 Q. How?

22 A. There's lots of different ways. We have gone through a
23 transformation at the bank to ensure that people -- to
24 emphasize the message that people should be reporting any
25 concerns, whether it's conduct related, behavior related,

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Jang Demian - cross

1 financial crime, anything that doesn't seem right. There's tip
2 lines, there's an integrity hot line, there's an HR central
3 phone number that can be used, you can always speak to your HR
4 manager, business partner like myself. There are many
5 different avenues.

6 Q. Does HSBC provide protection to employees who do report
7 misconduct?

8 A. Yes.

9 Q. How does HSBC go about doing that?

10 A. When we do conduct investigations we remind individuals
11 that we speak with that first they're meant to keep
12 conversations absolutely confidential, they're not meant to
13 talk to other employees. In addition to that, we remind them
14 of our non-retaliation policy at the bank.

15 Q. When you conduct interviews as part of an investigation of
16 misconduct, do you also remind the interviewees of the
17 anti-retaliation policy?

18 A. Yes, that's pretty normal, standard procedures.

19 Q. What can an HSBC employee do if they feel they're being
20 retaliated against?

21 A. Similar, they can report it to a tip line, hotline, to
22 their HR manager, to their manager directly.

23 Q. In your view, does HSBC take its commitment to
24 anti-retaliation seriously?

25 A. Absolutely.

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Jang Demian - cross

1 Q. Were you involved in the decision to hire Mr. Picarella?

2 A. I was HR business partner that helped to hire him, yes.

3 Q. To your knowledge, was Mr. Picarella promised a specific
4 bonus when he was hired by HSBC?

5 A. No, he was hired with a discretionary bonus only, so no.

6 Q. If Mr. Picarella had been promised a specific bonus at the
7 time of his hiring, what would have needed to happen?

8 A. We would have needed special approval from our London
9 office and CEO, and it would have been captured as a written
10 guarantee in the offer letter.

11 Q. Does HSBC typically promise promotions to applicants during
12 the hiring process?

13 A. Definitely not.

14 Q. Why not?

15 A. Because promotions are discretionary. They're subject to
16 performance and the individual's performance, and there's a
17 whole review process that takes place. So even if you're
18 nominated for promotion by your manager doesn't necessarily
19 mean that you would be approved for promotion in that year. So
20 you can't commit to that in advance if you don't know -- don't
21 have full control of the process.

22 Q. If someone is designated as a potential successor to a
23 role, does that mean that they're automatically promised the
24 promotion to that role?

25 A. No. There's usually numerous successors for any one role,

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Jang Demian - cross

1 ideally. And again, it's subject to many factors, including
2 performance, capabilities, assessment in the role and for the
3 new role that you would be a successor for.

4 Q. Ms. Jang, this is PX-1. This is a document that we looked
5 at earlier this morning. These are your notes of your
6 April 26, 2012 meeting with Ms. Hedges.

7 A. That's correct.

8 Q. When you met with Ms. Hedges on April 26, was anyone else
9 present for that meeting?

10 A. No, it was just myself and Eileen.

11 Q. Were you the one who set up this meeting?

12 A. Eileen actually requested the meeting.

13 Q. Why did Ms. Hedges request the meeting?

14 A. She had some concerns about Mike's performance and asked me
15 to talk about them.

16 Q. What were Ms. Hedges' concerns of Mr. Picarella's
17 performance that she related to you during this meeting?

18 A. Well, we had previously talked about having regular
19 meetings with Mike, which she was doing, and she wanted to
20 update me on those meetings. She also had expressed her
21 concerns from when she was out on disability for her knee
22 surgery, and Mike was covering for her during that time, and
23 there was poor feedback from various stakeholders in the
24 business and support functions regarding his ability in the
25 role.

GC9TPIC1

Jang Demian - cross

1 Q. During your meeting with Ms. Hedges, did you disclose to
2 Ms. Hedges that Mr. Picarella was the one who had raised the
3 concerns about her?

4 A. No.

5 Q. Was the alleged misconduct that you asked Ms. Hedges about
6 directed toward a specific person?

7 A. Sorry, can you repeat that?

8 Q. Sure. During this meeting you discussed at least three
9 issues with -- regarding Ms. Hedges' performance that had been
10 raised, correct?

11 A. Yes.

12 Q. Were these three issues directed towards a specific
13 individual, another employee at HSBC?

14 A. It was directed to Eileen to ask her about the issues that
15 had been brought to our attention.

16 Sorry, I'm not sure if I'm understanding your question
17 correctly.

18 Q. That's okay.

19 Did you understand the complaints to be that
20 Ms. Hedges acted inappropriately towards another HSBC employee?

21 A. During the discussion she asked if it was regarding Mike,
22 and I told her I couldn't disclose who it was coming from.

23 Q. How did Ms. Hedges react when you raised these concerns
24 with her?

25 A. She was clearly very upset. I would say upset. She was --

GC9TPIC1

Jang Demian - cross

1 she was surprised. She wasn't expecting to hear the items we
2 were talking about.

3 Q. Would you give us a brief summary of the concerns that had
4 been raised that were discussed with Ms. Hedges during this
5 meeting?

6 A. One of the items was regarding her practice of basically
7 keeping her Blackberry in her bra, so she would take out her
8 Blackberry from under her shirt. And we talked about that
9 being unprofessional and that she shouldn't do it, and she
10 agreed she would not do that.

11 The three second rule is regarding basically a sexual
12 act that she had me mention. We sit on trading floors, so it's
13 kind of open seating, almost similar to how you're seated, a
14 little further apart. So it's a very open environment, and she
15 made a comment about a three second rule, which she did not
16 deny. She basically said that she had said it in a joking way,
17 but realized that she can't have conversations like that on an
18 open floor, or at work at all.

19 And the other comment was regarding having discussions
20 with employees in an open environment. So if there was either
21 concern about somebody's performance or somebody didn't do
22 something correctly or any conversations regarding business
23 activities, to do her best to do that in an office setting, in
24 a closed office rather than on the open floor.

25 Q. Ms. Jang, were you aware that Eileen Hedges and Ellen Weiss

GC9TPIC1

Jang Demian - cross

1 were friends?

2 A. Yes.

3 Q. Did you have any concerns about Ms. Weiss being involved in
4 the investigation of Ms. Hedges?

5 A. I worked for Ellen for ten years, over ten years, and
6 during that time I would say one of the things that we
7 constantly had to go through was people within our business who
8 we had relationships with sometimes were on the other end of
9 being let go or having to go through warnings or
10 investigations. And it's never been an issue for Ellen, and we
11 always know that we need to put out professional work first.

12 Q. Let's look at PX-120.

13 This is also a document that we looked at earlier,
14 Ms. Jang. It's the notes of your July 24, 2012 meeting with
15 Eileen Hedges.

16 What was the discipline that was being imposed on
17 Ms. Hedges?

18 A. She was notified that she was being put on final written
19 warning, that her management responsibilities were being taken
20 away, and the reporting lines were going to change for both
21 herself and Mike. She knew it was very serious.

22 Q. And in your view, in your years of experience in HR, did
23 you view this as a serious punishment?

24 A. It was definitely very serious. I mean in addition to
25 this, although we don't typically include it as part of our

GC9TPIC1

Jang Demian - cross

1 memos or warnings, but she would have also had a bonus
2 reduction at the end of the year for having received something
3 like this, which I know she anticipated.

4 Q. Did Ms. Hedges raise any concerns with you during this
5 meeting?

6 A. She was concerned that she felt Mike was speaking
7 negatively about her within the organization and other business
8 areas that supported global markets and trading.

9 Q. If that had been true would it have been an appropriate
10 comment?

11 A. No.

12 Q. Who assumed Ms. Hedges' responsibilities as Mr. Picarella's
13 manager?

14 A. They were split up. Her job kind of was restructured in a
15 way that was split among other people, between -- I believe it
16 was another manager, she would retain certain responsibilities.

17 Q. So who was the business manager that Mr. Picarella was
18 reporting to after Ms. Hedges?

19 A. Suzy White, who was our COO for global markets.

20 Q. And then after Ms. White, was there another individual,
21 Ms. Jenner, that Mr. Picarella was reporting to?

22 A. Yes, Carol Jenner.

23 Q. Were you familiar with Carol Jenner?

24 A. I didn't know her that well.

25 Q. How was Ms. Jenner regarded in the organization?

GC9TPIC1

Jang Demian - cross

1 A. She had a very strong reputation. She was highly rated.
2 What I did know of her was she was considered to be like an
3 up-and-coming female professional within the business
4 management function.

5 Q. Did you have any involvement in the decision to promote
6 Carol Jenner to the head of business development position?

7 A. I would not have been part of that decision, and generally
8 it's up to the business to make those final determinations.

9 (Continued on next page)

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GC99PIC2

Jang Demian - cross

1 Q. Do you know whether Mr. Picarella was considered for the
2 position?

3 A. I believe he was considered, having worked in the --
4 sorry -- it's a little awkward -- having worked in the
5 department previously, yes, he would have been a natural person
6 to consider as part of the decision.

7 MR. HUBBARD: Objection, your Honor. Obviously she
8 doesn't know.

9 THE COURT: Overruled.

10 Q. Ms. Jang at HSBC could someone be rated a three strong and
11 still have performance issues?

12 A. Yes.

13 Q. If an employee receives an off-track rating at mid year are
14 they required to be placed on a performance improvement plan?

15 A. They're not, no.

16 Q. I believe you testified earlier in response to
17 Mr. Hubbard's questions that Pablo Pizzimbono had raised
18 concerns about Mr. Picarella's performance?

19 A. Yes.

20 Q. What was the nature of Mr. Pizzimbono's concerns regarding
21 Mr. Picarella's performance?

22 MR. HUBBARD: Hearsay objection.

23 THE COURT: Overruled.

24 Go ahead. You may answer.

25 THE WITNESS: Sorry. Can you repeat that.

GC99PIC2

Jang Demian - cross

1 Q. Sure. Did you have conversations with Mr. Pizzimbono about
2 Mr. Picarella's performance?

3 A. Yes.

4 MR. HUBBARD: Objection, your Honor. Hearsay.

5 THE COURT: Overruled. Go ahead.

6 Q. And during your -- as a result of your conversations with
7 Mr. Pizzimbono what did you learn regarding Mr. Pizzimbono's
8 view of Mr. Picarella's performance?

9 A. He thought generally Mike was a weaker performer.

10 Q. Is there anything else that Mr. Pizzimbono mentioned to you
11 regarding Mr. Picarella's performance?

12 A. I mean the view from Pablo, who was one of the interviewees
13 at the time to hire Mike, was that the capabilities that he was
14 demonstrating in the office in the roles -- in the
15 responsibilities was not as strong as what they had hoped when
16 they hired him.

17 Q. Did Mr. Pizzimbono raise these concerns with you on more
18 than one occasion?

19 A. Yes.

20 MS. LEVIN: Your Honor, may I have one moment?

21 THE COURT: Yes.

22 MS. LEVIN: I just have one more question, Ms. Jang.
23 Thank you for coming in today. We appreciate it.

24 Q. Do you think that anyone at HSBC retaliated against
25 Mr. Picarella?

GC99PIC2

Jang Demian - redirect

1 A. Definitely not.

2 MR. HUBBARD: Your Honor.

3 MS. LEVIN: No further questions.

4 MR. HUBBARD: Objection. Speculation.

5 THE COURT: I'll sustain. Please rephrase the last
6 question.

7 Q. Did you ever witness anything that could have been
8 retaliation against Mr. Picarella?

9 A. No.

10 MS. LEVIN: No further questions.

11 THE COURT: Okay. Any redirect?

12 MR. HUBBARD: Just one, your Honor.

13 REDIRECT EXAMINATION

14 BY MR. HUBBARD:

15 Q. You said, Ms. Jang, that you thought that Mr. Picarella
16 might have been considered as a replacement for Ms. Jenner?

17 A. Yes.

18 Q. And you don't have any direct knowledge of that, do you?

19 A. I know that.

20 Q. Yes or no?

21 A. Yes.

22 Q. I understood you to say when I was examining you that you
23 thought that that was a practice that she might have been
24 considered as a matter of normal practice?

25 A. She, Carol?

GC99PIC2

Silber - direct

1 Q. Yes.

2 A. Sorry. Can you repeat that?

3 Q. Yes, ma'am.

4 A. I'm confused.

5 Q. What I'm trying to get at is I understood from your answers
6 that you believed she might have been considered -- that
7 Mr. Picarella might have been considered for that job, right?

8 A. Yes.

9 Q. Because that was kind of the practice of the firm. I did
10 not understand you to be saying that you had actual knowledge
11 as to whether or not he had been interviewed or considered.

12 A. The reason why I said yes is because I know that his resume
13 was requested at the time we were making the -- the decision
14 was being made.

15 Q. Do you know if he was interviewed for the position?

16 A. I don't know.

17 MR. HUBBARD: Thank you.

18 THE COURT: Thank you. The witness is excused.

19 (Witness excused)

20 THE COURT: Plaintiff can call your next witness.

21 MR. HUBBARD: Yes. Mr. Karam, your Honor.

22 MS. LEVIN: No, your Honor. Mr. Silber is next.

23 MR. HUBBARD: Okay, your Honor. Mr. Silber is fine.

24 (Continued on next page)

GC99PIC2

Silber - direct

1 DANIEL SILBER,

2 called as a witness by the Plaintiff,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HUBBARD:

6 Q. Good morning, Mr. Silber. How are you?

7 A. Good morning.

8 Q. Tell us how you are employed, please.

9 A. I'm currently employed by HSBC Bank USA.

10 THE COURT: Let me just check in with the jury. Is
11 the jury able to hear the witness okay? Just make sure you
12 lean into the mic.

13 THE WITNESS: Sure.

14 Q. Tell us what kind of job you do, please, sir.

15 A. I run our institutional sales business for the Americas so
16 I'm responsible for our client franchise and how it engages and
17 interfaces with our network and our proposition.

18 Q. How long have you been in that position?

19 A. Since around October, September of 2003. So I think it's
20 about 13 years or so.

21 Q. And in the year -- in the year 2015 did you have that
22 position?

23 A. I did.

24 Q. Did you have at that time regularly scheduled telephone
25 conferences with executives that worked with you in the sales

GC99PIC2

Silber - direct

1 function at HSBC?

2 A. So, I had biweekly management meetings, if that's what
3 you're referring to.

4 Q. Your deposition was taken in this case, correct?

5 A. Correct.

6 Q. And in that deposition we discussed one such conference
7 call that took place around the middle of January 2015. Do you
8 recall that?

9 A. You keep referring to a conference call so if you're
10 referring to a management meeting that may have had
11 participation with teleconference then I do.

12 Q. Yes. I'm sorry. There was a meeting at or about that time
13 and some of the people that attended, attended by phone?

14 A. I believe so.

15 Q. And so there were some of your colleagues actually in
16 attendance in the meeting?

17 A. Yes, sir.

18 Q. Where did the meeting take place?

19 A. It was at our offices on Fifth Avenue.

20 Q. How many executives attended the meeting in person?

21 A. I don't recall.

22 Q. Where did the meeting take place in the building?

23 A. I don't recall.

24 Q. And do you recall how many executives attended by phone?

25 A. No.

GC99PIC2

Silber - direct

1 Q. Do you recall testifying at deposition that it was a
2 relatively large number, 20 or so people, maybe 20, 30?

3 A. I don't recall my testimony but that sounds very plausible.

4 Q. So it would be plausible that your biweekly meeting, this
5 meeting we're talking about, could have had as many as 20 or 30
6 executives either in person or by phone?

7 A. Thirty is probably high but 20 sounds pretty plausible.

8 Q. Let me direct your attention to January 12 of 2015. Is
9 that the meeting that we talked about and we talked about at
10 your deposition?

11 A. Okay.

12 Q. Do you remember the subject -- did you lead the discussion
13 at that meeting?

14 A. If the meeting you're talking about is what I think it is I
15 recall coming late to that meeting.

16 Q. What meeting do you think it is we're referring to?

17 A. You'd have to refresh my memory. It's one of my management
18 meetings.

19 Q. The one that was leaked -- the one that HSBC had alleged
20 was leaked to the press?

21 A. Okay.

22 Q. What meeting was that?

23 A. It was a management meeting that occurred just like every
24 other management meeting that we had.

25 Q. On that date, January 12, 2015?

GC99PIC2

Silber - direct

1 A. Yes.

2 Q. And what was discussed at that meeting, please?

3 A. Well, again, I came late, as I recall. We conducted
4 general sales matters, how the business was doing, things of
5 that nature. Nothing out of the ordinary.

6 I do know that prior to my arrival we had -- one of
7 our legal members, I believe it was Frank Weigand, in talking
8 about some matters related to FINRA, very general, that I
9 didn't participate in. And then I came in and had my general
10 management discussion.

11 Q. Were there some discussions at that meeting while you were
12 present about some earlier leaks of information from Bloomberg
13 chats?

14 A. Not that I recall.

15 Q. Do you recall if Mr. Picarella attended the meeting by
16 phone?

17 A. I don't recall.

18 Q. Did he regularly attend these biweekly business meetings
19 that you convened?

20 A. I don't recall.

21 Q. Did there come a time after that meeting that you reported
22 to HSBC a call to you the next day from a New York Post
23 reporter?

24 A. Could you repeat the question, please.

25 Q. Yes, sir. Did you have occasion the next day to report to

GC99PIC2

Silber - direct

1 the company that you had received a call the next day,
2 January 13, from a New York Post reporter?

3 A. So getting a call from a New York Post reporter?

4 Q. Yes, sir.

5 A. And I recall having discussions about that call with a
6 couple of my colleagues.

7 Q. Yes, sir.

8 A. Yes.

9 Q. Do you remember that reporter's name?

10 A. I believe it was -- last name was Dugan. Might have been
11 Kevin Dugan.

12 Q. And I gather he called you on your office line?

13 A. Yes.

14 Q. Give us your best and fullest recollection of what he said
15 to you and what you said to him.

16 A. Well, I recall Kevin introducing himself and referring to a
17 bunch of disparate things that quite frankly didn't make a lot
18 of sense to me. So I remember him saying the word leaks. I
19 remember him talking about chats. And it took me a few minutes
20 to kind of acclimate myself to what he was referring until I
21 realized he was talking about the management meeting that we
22 had had the day before.

23 Q. Is that because at that meeting there was discussion of
24 leaks and chats?

25 A. I don't know why -- I don't know why I know that he was

GC99PIC2

Silber - direct

1 referring to things -- a meeting -- he talked about a meeting
2 and I don't know what exactly he was referring to within that
3 meeting. And some of those things may have been things that I
4 said and some of them may not have.

5 Q. But the reason you thought he was referring to the meeting
6 the day before is because he referred to leaks and chats that
7 had been discussed at the meeting the day before?

8 A. That's not necessarily why I concluded it; and, again, I
9 don't remember the entire conversation. But after a few
10 minutes it was pretty clear what he was referring to.

11 Q. But in any event you believed he was referring to that
12 call -- your business meeting the day before?

13 A. Yes.

14 Q. And he wasn't in the meeting?

15 A. Correct.

16 Q. Mr. Dugan?

17 A. Correct.

18 Q. So you naturally wondered where he got the information
19 from?

20 A. Absolutely.

21 Q. You were concerned about it?

22 A. Very much so.

23 Q. And you went to see some of your -- who did you go express
24 your concern to?

25 A. I remember expressing the concern to our COO, Suzy White.

GC99PIC2

Silber - direct

1 I also remember also discussing it with my boss Didier
2 Descamps.

3 Q. All right. In any of those discussions did Mr. Picarella's
4 name come up as a possible source of the leak to this newspaper
5 reporter?

6 A. I don't recall.

7 Q. If I give you a copy of your deposition.

8 MR. BORTNICK: May I approach the witness?

9 THE COURT: Yes. Counsel, are you attempting to
10 refresh or impeach at this point?

11 MR. HUBBARD: Impeach.

12 THE COURT: Can you give counsel the page number and
13 line number.

14 MR. HUBBARD: Yes. Page 43, line 2.

15 Q. If you look at page 43 there, Mr. Silber?

16 A. I see it.

17 Q. Page 43 you were asked -- may I ask you if you were asked
18 these questions -- this question and gave this answer:

19 "Did anyone in your presence suggest that
20 Mr. Picarella might be the source of the leak?

21 "A. I recall his name coming up as a possible source of the
22 leak."

23 Were you asked that question and did you give that
24 answer?

25 A. Yes.

GC99PIC2

Silber - direct

1 Q. Did you have any reason to suspect that Mr. Picarella might
2 have been the source of leaking that internal information?

3 A. Well I think it was general deduction. I knew that
4 Mr. Picarella had filed a lawsuit against the firm. There had
5 been some prior New York Post articles to that effect. So it
6 was really putting one plus one together.

7 Q. The truth is that you suspected him because you believed
8 that he was a disgruntled employee who was suing the bank; is
9 that correct?

10 A. No.

11 MR. HUBBARD: Turn to page 44, please. Page 44, line
12 7.

13 THE WITNESS: Mm-hmm.

14 "Q. Do you have any reason to suspect that he might have been
15 the source of leaking this internal information?

16 "A. Could you ask that question again?

17 "Q. Yes. What is the reason?

18 "A. There were leaks prior to this.

19 "Q. Okay.

20 "A. He's a disgruntled employee who was suing the bank."

21 A. Right.

22 Q. Do you recall those questions and those answers?

23 A. Sure. I don't think that's any different than what I just
24 said.

25 Q. That's not why I asked you.

GC99PIC2

Silber - cross

1 THE COURT: Were you asked those questions and did you
2 give those answers?

3 THE WITNESS: Yes.

4 Q. Other than the suggestion you made that he was a
5 disgruntled employee, at the time that you made that suggestion
6 did you have any evidence that Mr. Picarella had spoken to the
7 reporter about that meeting or in any way provided that
8 information to the New York Post?

9 A. No.

10 MS. LEVIN: Objection.

11 THE COURT: Overruled.

12 Q. Did you have any evidence at that time that Mr. Picarella
13 had leaked any information in -- during the course of his
14 employment at any time prior to that meeting?

15 A. No.

16 MR. HUBBARD: Nothing further, your Honor.

17 THE COURT: Okay. Any cross-examination?

18 MS. LEVIN: Yes, your Honor. Very brief.

19 CROSS-EXAMINATION

20 BY MS. LEVIN:

21 Q. Good morning, Mr. Silber.

22 A. Good morning.

23 Q. In the 2012 to 2015 time period did you have the occasion
24 to interact with Mr. Picarella in a professional capacity?

25 A. I did.

GC99PIC2

Silber - cross

1 Q. What were your general impressions of Mr. Picarella as a
2 result of your interactions with him?

3 A. Just to give a little context. It was not frequent. It
4 was not day-to-day. It was occasional.

5 And I'd say broadly not particularly impressive.

6 And, again, there are not -- it's a while ago so not a
7 lot of tremendous number of specific circumstances but I do
8 recall one set of interactions that left a relatively
9 unfavorable impression in terms of his work product, his
10 diligence, his execution on assigned tasks.

11 Q. Was one of the projects that Mr. Picarella was responsible
12 for called the GM weekly report?

13 A. Yes.

14 Q. Would you describe to the jury what the GM weekly report
15 is?

16 A. Sure. So as a person overseeing the sales business we have
17 similarly situated professionals in other centers. I report up
18 globally a couple of layers above to a gentleman named Tebow
19 Durou who runs our global markets business globally. And as
20 part of our governance process every week we would gather and
21 discuss sales schematics, challenges, particularly interesting
22 thematics in our client base, etc. And gathering that set of
23 information from my sales force, which is a pretty large number
24 of people, was an important task. Synthesizing that
25 information, presenting it to me in a way that was clear and

GC99PIC2

Silber - cross

1 coherent was important.

2 I would then take that information and participate in
3 probably a half-hour forum each week with Mr. Durou, as well as
4 my counterparts, the sales heads from other regions, and come
5 together and talk about the business. And it was an important
6 part of our governance process.

7 Q. Do you consider the GM weekly report to be an important
8 project, correct?

9 A. Absolutely.

10 Q. What were Mr. Picarella's responsibilities in connection
11 with the GM weekly report?

12 A. As I recall Mr. Picarella was really responsible for
13 collecting all the information that went into that report,
14 insuring that it was accurate, insuring that it was clear, that
15 it was complete, and that, quite frankly, I wouldn't have to do
16 a tremendous amount of backwork in preparation for that
17 meeting.

18 Q. And how did Mr. Picarella perform in connection with the GM
19 weekly report?

20 A. Poorly.

21 And again it's a while back. And, again, because we
22 didn't have a tremendous amount of interaction. But in this
23 particular case what I do recall is that there were many gaps
24 in the reports. There were things missing. Things weren't
25 clear. Had to do a lot of checking and rechecking.

GC99PIC2

Silber - cross

1 I would just call it sloppy, incomplete, not the type
2 of work product that I would deliver to my boss and certainly
3 not to my boss's boss. Unimpressive.

4 Q. Mr. Hubbard asked you questions about the leak of
5 information to a reporter that was discussed on the weekly
6 manager's meeting. Do you recall that?

7 A. I do.

8 Q. Did HSBC conduct a formal investigation to determine who
9 the source of the leak was?

10 A. I believe they did.

11 Q. Did you have any involvement in that investigation?

12 A. No.

13 Q. Do you know what the conclusion was as a result of the
14 investigation?

15 A. No.

16 Q. Mr. Hubbard also asked you about some of your deposition
17 testimony, specifically when you testified that you recall
18 Mr. Picarella's name coming up as a possible source of the
19 leak. What did you mean by that?

20 A. I just remembered his name coming up during the discussion
21 about a possible source. I don't know who suggested it. It
22 might have been all three of us. I don't recall.

23 Can I just add something, if I may? What I recall
24 most is the discussion about the leak. A lot less so about
25 Mr. Picarella's name, if I could quantify the magnitude of what

GC99PIC2

1 was discussed.

2 Q. Did you have any involvement in the termination of
3 Mr. Picarella's employment from HSBC?

4 A. No.

5 Q. Based on the interaction that you did have with
6 Mr. Picarella, were you surprised that HSBC decided to
7 terminate his employment?

8 MR. HUBBARD: Objection, your Honor.

9 THE COURT: Can you please rephrase that question.

10 MS. LEVIN: I'll withdraw it, your Honor.

11 Q. As far as you know between October 2014 and Mr. Picarella's
12 termination were any of Mr. Picarella's job responsibilities
13 taken away from him?

14 A. Not to my knowledge.

15 Q. Did you observe any conduct at HSBC in which it appeared
16 that Mr. Picarella was being retaliated against?

17 A. No.

18 MS. LEVIN: May I have one moment, your Honor?

19 No further questions, your Honor. Thank you.

20 THE COURT: Any redirect?

21 MR. HUBBARD: Nothing further, your Honor.

22 THE COURT: Thank you. The witness is excused.

23 (Witness excused)

24 THE COURT: Let's go ahead and take our morning break
25 now. We'll take a fifteen-minute break. Don't discuss the

GC99PIC2

1 case amongst yourselves or with anyone else. I'll see you in
2 fifteen minutes.

3 (Jury excused)

4 THE COURT: Okay. See you in fifteen.

5 (Recess)

6 (Continued on next page)

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GC99PIC2

1 (In open court)

2 THE COURT: Okay we're going to bring the jury in.

3 MR. JACKSON: Your Honor, should we have a witness
4 sitting in the witness stand?

5 THE COURT: I guess we'll have the ceremony of them
6 coming to the stand. That's fine.

7 (Continued on next page)

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GC99PIC2

Descamps - direct

1 (Jury present)

2 THE COURT: Welcome back. Let's continue. Counsel,
3 you may call your next witness.

4 MR. HUBBARD: Thank you, your Honor. Mr. Didier
5 Descamps, please.

6 DIDIER DESCAMPS,

7 called as a witness by the Plaintiff,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HUBBARD:

11 Q. Good morning, Mr. Descamps. How are you?

12 A. Good morning.

13 Q. You had traveled a distance to visit with us today?

14 A. Absolutely.

15 THE COURT: Let me just ask the witness to completely
16 lean into the microphone.

17 Q. Let's go back a moment and go back to the timeframe of
18 2011, '12. Would you tell us how you were employed at HSBC?

19 A. Starting from January 2010 I was employed in HSBC in the
20 US. I was previously working for HSBC in France and I was
21 first global -- company head of global marks for Americas based
22 in New York. And then from March 2012 until September last
23 year I was head of global markets for Americas for HSBC group.

24 THE COURT: Now let me just check in. Are the jurors
25 able to hear the witness?

GC99PIC2

Descamps - direct

1 JUROR: A little hard.

2 THE COURT: Lean into the mic and try to speak a
3 little bit louder.

4 THE WITNESS: Okay. Do you want me to repeat?

5 THE COURT: Yes. Why don't you repeat that last
6 answer. Go ahead.

7 THE WITNESS: So starting January 2010 I moved from
8 Paris office of HSBC to the office in New York. I was cohead
9 of global markets for Americas for the HSBC group in New York.
10 And from March 2012 until September of last year I was head of
11 global markets for Americas in New York.

12 THE COURT: Are the jurors able to hear the witness
13 now?

14 Great. Go ahead counsel.

15 Q. Meaning an expansion from just.

16 THE COURT: Hold on just a second. Let's just wait
17 for that.

18 Go ahead counsel.

19 Q. Meaning an expansion from just the Americas to global, your
20 duties?

21 A. No. My duties -- we were two sharing the job from
22 January 2010 to March '12 and I was the sole head of markets
23 for Americas starting March 2012 until September '15.

24 Q. Did there come a time when -- you know Mr. Picarella?

25 A. Absolutely.

GC99PIC2

Descamps - direct

1 Q. Did there come a time when his manager, Michael Karam, met
2 with you and recommended that his employment be terminated?

3 A. Yes.

4 Q. And based upon your knowledge of the situation, your
5 investigation, I gather that you made the decision that his
6 employment would be terminated?

7 A. I made the final decision based on the documentation
8 provided to me by Mike Karam and the HR department.

9 MR. HUBBARD: Just need one document here.

10 THE COURT: Again, the witness -- the acoustics here
11 aren't great so try to make sure you continue to keep your
12 voice up. All right?

13 THE WITNESS: Okay.

14 MR. HUBBARD: May I have Exhibit 247, please.

15 MR. JACKSON: Already in evidence, your Honor. No
16 objection.

17 Q. This letter is dated March 26, 2015. You've seen this
18 letter before?

19 A. Yes.

20 Q. It's a letter that was sent to Mr. Picarella about that
21 time informing him that the decision had been made to terminate
22 his employment?

23 A. Absolutely.

24 Q. If we go to the bottom it's signed by Susan Roskell. Was
25 Ms. Roskell in the discussions with you when the decision was

GC99PIC2

Descamps - direct

1 made to terminate his employment?

2 A. Yes. Absolutely.

3 THE COURT: Just one moment, counsel. Again, counsel,
4 since the acoustics and the way things are set up the mic is a
5 little bit far away. So we're going to hand him this cordless
6 mic and see if that helps the jurors be able to hear the
7 witness a little bit better. So go ahead. Let's test this
8 out. Do a mic test.

9 THE WITNESS: One, two, three. Is that better? I
10 will try to speak louder.

11 MR. JACKSON: Your Honor.

12 THE COURT: Was it better the first way? Take the
13 cordless mic away.

14 MR. JACKSON: There are some books right there. I
15 think if we place the original mic on top of those books in the
16 front I think it would be helpful.

17 THE COURT: We can try that.

18 Okay. Testing. One, two, three.

19 THE WITNESS: One, two, three.

20 MR. HUBBARD: Take that one down just a minute, Peter.
21 And see if -- I need the January '15 letter Mr. Marshall to me.
22 244.

23 Is this in evidence?

24 MR. BORTNICK: Yes.

25 Q. Let me show you this letter.

GC99PIC2

Descamps - direct

1 On January 15, 2015 -- let me step back a second.

2 This appears to be a letter to me from Mr. Marshall. You know
3 who Mr. Marshall is?

4 A. Yes.

5 Q. The bank counsel at the time?

6 A. Absolutely.

7 Q. At this time January 15, 2015, Mr. Picarella's employment
8 at the bank had not yet been terminated?

9 A. No.

10 Q. And you see he writes in the second sentence -- I'm sorry.
11 Let's do the first two sentences.

12 I write to inform you that HSBC has placed
13 Mr. Picarella on paid administrative leave effective
14 immediately. HSBC has reason to believe that Mr. Picarella has
15 conveyed confidential -- and potentially privileged -- HSBC
16 information to one or more third parties not entitled to hold
17 such information, in violation of HSBC's policies and the terms
18 of his employment. His access to HSBC's systems and premises
19 has been suspended. This action is necessary to protect the
20 confidential information and assets of HSBC.

21 At the time that document was written had your
22 financial crimes division begun any investigation of those
23 leaks?

24 A. Absolutely.

25 Q. They had or had not?

GC99PIC2

Descamps - direct

1 A. I think -- I don't remember the exact timing but clearly an
2 investigation was conducted about the leak.

3 Q. I understand. But, with respect, that was not my question.

4 Do you recall that there was a telephone
5 conversation -- there was a conference call, business
6 conference call on January 12 of 2015 with Mr. Silber's staff
7 and the next day a reporter called him who was obviously not in
8 the meeting?

9 A. Absolutely.

10 Q. And Mr. Silber reported to your management that he was
11 concerned that there had been some leak?

12 A. Absolutely.

13 Q. Of that January call.

14 And so that call would have been on the 13th of
15 January and this letter is now on the 15th. So I want to go
16 back and say isn't it fair to say that the investigation that
17 was, in fact, conducted had not yet begun on the 15th?

18 A. I don't remember the exact timing. What I can tell you is
19 that as soon as the event happened we contacted the security
20 department to initiate an investigation. Because it was quite
21 obvious from the call received by Dan Silber from a journalist
22 that that journalist was given access to information that was
23 private and confidential.

24 Q. And you may recall that Mr. Kutas, the in-house
25 investigation team at the bank, finally wrote a report and

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Descamps - direct

1 presented it to you sometime around the end of March?

2 A. Yes. More or less. Yeah. I don't remember the exact date
3 but more or less.

4 Q. Regardless, on this date of this letter, January 15, 2015,
5 if there had been any investigation begun, it was in its
6 infancy?

7 A. Probably in its infancy, yeah. But what I remember is that
8 very shortly, we weren't even certain that Mr. Picarella was on
9 the call, he was working from home at that time, and the first
10 thing was check was whether he had attended the call by phone
11 and we had confirmation immediately that he was.

12 Q. Well there was no question, was there, Mr. Descamps, that
13 he was on the call?

14 A. Sorry?

15 Q. There was no question that he was on the call?

16 A. Well we checked he was on the call. And we had not checked
17 by the people that went to check the communication on that
18 call.

19 Q. All you had to do was ask Mr. Silber if he was on the call.

20 A. I don't know. I did not conduct myself the investigation.
21 But that's the first step which we took.

22 Q. But in any event you did attempt to confirm that he was on
23 the call by checking the records and you determined that he
24 was?

25 A. Absolutely.

GC99PIC2

Descamps - direct

1 Q. Attending by phone?

2 A. Yeah.

3 MR. HUBBARD: Let's go back to the May 27 letter,
4 Peter, the termination letter.

5 The March 27 letter. What's the number?

6 MR. BORTNICK: 247.

7 MR. HUBBARD: 247.

8 Q. Again, that reflects the decision that was made ultimately
9 by you based upon the information you had that his employment
10 would be terminated on or about the date the letter is written,
11 correct?

12 A. Yes.

13 Q. Is it fair to say that you were told before the conclusion
14 of the investigation and before you made that decision that
15 there was no proof available about where the leak was from and
16 you did not take any such evidence into consideration in your
17 decision?

18 MR. JACKSON: Objection. Compound.

19 THE COURT: Can you rephrase the question, counsel.

20 MR. HUBBARD: Yes.

21 Q. You were told before making that decision and concluding
22 the investigation that there was no proof available about where
23 the leak came from?

24 A. We were told that there was high probability that
25 Mr. Picarella or somebody working with him could have been the

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Descamps - direct

1 source of the leak but there was no factual proof so we should
2 not take that absolutely into consideration in any decision
3 concerning Mr. Picarella's employment.

4 MR. BORTNICK: May I approach the witness, your Honor.
5 BY MR. HUBBARD:

6 Q. Mr. Descamps, you don't make decisions to terminate senior
7 people based on suspicion, do you?

8 A. I don't.

9 MR. BORTNICK: May I approach the witness, your Honor?

10 THE COURT: Okay.

11 BY MR. HUBBARD:

12 Q. May I ask you to turn to page 47.

13 Do you recall -- this is a copy of your deposition
14 transcript. Do you recall that on May 15, 2015 in this case
15 that your testimony was taken here in New York about these
16 events under oath?

17 A. Absolutely.

18 Q. And if you'll turn to page 47. Beginning at line 11.

19 "Q. Did you, in terminating him, did you take into
20 consideration this theory that he or his lawyer may have
21 disclosed this information from the sales meeting."

22 There's an objection to the question. You may answer.
23 Your answer: "We were told --

24 THE COURT: Hold on. Hold on. Go back and please
25 rephrase the question.

GC99PIC2

Descamps - direct

1 MR. HUBBARD: I'm sorry.

2 Q. Let me ask you to take -- to look at the transcript here
3 beginning at line 11, okay. Let me ask you if you were asked
4 this question and you gave these answers.

5 "Did you, in terminating him, did you take into
6 consideration this theory that he or his lawyer may have
7 disclosed this information from the sales meeting?"

8 There's an objection to the question.

9 THE COURT: Hold on. Objection sustained.

10 MR. HUBBARD: Question. Were you asked this question
11 "You may answer," and did you give this answer.

12 THE COURT: Hold on. The objection is sustained.
13 Please -- let's do this. Let me just see counsel in the robing
14 room for a second. We don't need the court reporter. Let me
15 see counsel in the robing room briefly.

16 (Robing room discussion off the record).

17 THE COURT: Objection sustained. Please rephrase the
18 question.

19 Q. Would you refer to -- may I direct your attention,
20 Mr. Descamps, to page 47?

21 A. 47.

22 Q. 47 of the transcript. Line 11, please. And let me ask you
23 if you were asked this these questions and if you gave this
24 answer, please.

25 "Q. Did you, in terminating him, did you take into

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Descamps - cross

1 consideration this theory that he or his lawyer may have
2 disclosed this information from the sales meeting?

3 Answer at line 17, "We were told before taking that
4 decision that the conclusion of the investigation that was that
5 no proof was available about where the leak was come so we
6 didn't take any consideration of that event in our decision."

7 Were you asked those questions and did you give those
8 answers on that date?

9 A. Yes.

10 MR. HUBBARD: Nothing further, your Honor.

11 THE COURT: Any cross-examination?

12 MR. JACKSON: Yes, please, your Honor.

13 CROSS-EXAMINATION

14 BY MR. JACKSON:

15 Q. Good morning, Mr. Descamps.

16 A. Good morning.

17 Q. Now, Mr. Descamps where did you grow up?

18 A. I grew up in southwest of France near Pyrenees which are
19 the mountains between France and Spain quite close to Atlantic
20 Ocean.

21 Q. When was it that you first worked in the United States?

22 A. The first time I worked in the United States was when I was
23 a student, was in the business core in France and we had to do
24 several type of trainings and some of them were operational
25 ones. So I came working during almost six months in

GC99PIC2

Descamps - cross

1 California, and part of it in the Valley, Modesto, working
2 night shift in a factory was producing ketchup.

3 Q. So when you worked in -- how long did you work in the
4 ketchup factory?

5 A. Probably two months there.

6 Q. Now, at some point you came to work at HSBC, right?

7 A. Yes. I was working in the bank in France which was named
8 CCF. Then was -- it was bought by HSBC in the year 2000 and
9 then I became an HSBC employee by our bank being bought by
10 HSBC.

11 Q. Where did you finish work after -- where physically were
12 you first working after HSBC acquired your bank?

13 A. I was in Paris at that time.

14 (Continued on next page)

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GC9TPIC4

Descamps - cross

1 BY MR. JACKSON:

2 Q. When was it that you came to the United States working for
3 HSBC?

4 A. Can you repeat, please?

5 Q. Yes. When was it that your work at HSBC brought you to the
6 U.S.?

7 A. I came in January 2010.

8 Q. Now during the time that you were in the United States,
9 were you working in New York that whole time?

10 A. Yes, I was based in New York the whole time. I was
11 traveling, obviously, but I was based in New York.

12 Q. Who were the people that reported directly to you during
13 that time period?

14 A. Well, I had responsibility over the Americas region, so I
15 had several direct reports in New York, the head of the
16 different trading businesses, the head of sales, the COO and
17 the head of the business management teams, and then I had
18 responsibility over the global market teams in Canada, Latin
19 America, Mexico.

20 Q. How many employees, approximately, in total were underneath
21 your supervision underneath all the lines of supervision
22 beneath you?

23 A. Around 800.

24 Q. And were two individuals named Suzy White and Pablo
25 Pizzimbono people that reported to you?

GC9TPIC4

Descamps - cross

1 A. Yes, absolutely.

2 Q. Now at any point when you were working in New York did you
3 become to be familiar with Mr. Picarella?

4 A. I met Mr. Picarella. He was known to me. Mr. Picarella
5 didn't work directly with me, but I met him several times in
6 meetings, yes.

7 Q. You said you met him several times in meetings. What was
8 your extent of your interaction with Mr. Picarella?

9 A. The interaction was quite limited, but sometimes certainly
10 I was attending meetings where Mr. Picarella may have been
11 there among other people.

12 Q. Do you know Mr. Picarella's title?

13 A. Mr. Picarella was senior vice president.

14 Q. And as a senior vice president -- well, which team did he
15 work on?

16 A. He was working on the business management team for the
17 sales business.

18 Q. And can you just describe what the role is generally of a
19 senior vice president working in that type of group?

20 A. Well, that group is supporting the business. It's not
21 involved on a day-to-day interaction with the clients, but he's
22 supporting the business management, which can be projects,
23 management information, surveys, new procedures, new controls
24 to be put in place, that kind of -- so it's a very diverse job,
25 I would say, generally speaking, in that business management

GC9TPIC4

Descamps - cross

1 team.

2 Q. Were you ever the person that personally filled out any of
3 Mr. Picarella's performance reviews?

4 A. No, never.

5 Q. Are you listed as countersigning manager on any of them?

6 A. I was -- at the time he was directly managed by Suzy White,
7 and as Suzy White was reporting to me I was listed as the
8 countersigning manager, which is the normal process we have at
9 HSBC.

10 Q. Did there come a time in early 2012 when Pablo Pizzimbono
11 spoke to you about Mr. Picarella's performance?

12 A. Yes.

13 Q. In summary, what did he communicate to you?

14 MR. HUBBARD: Objection, your Honor, hearsay.

15 THE COURT: Overruled. You may answer.

16 A. Mr. Picarella was at that time quite recently hired, so
17 clearly in the position of a senior role we would make sure
18 there was a particular focus and making sure that the
19 integration is working well and the performance is at the level
20 we are expecting.

21 I felt Mr. Picarella performed at mid level, more or
22 less, and at the end of the year when we have the normal
23 performance review process Pablo brought to me the fact that --
24 without showing -- I don't remember seeing the review itself,
25 but Pablo spoke to me about the fact that the first months of

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Descamps - cross

1 performance were not at the level he was expecting.

2 Q. And at this time when you were speaking with Mr. Pizzimbono
3 had you heard anything about any allegations related to sexual
4 harassment or any way connected to Mr. Picarella?

5 A. No, absolutely not.

6 Q. Now at some point in that year did you come to learn about
7 an investigation into an employee named Eileen Hedges?

8 A. Yes.

9 Q. And were you personally involved in that investigation?

10 A. I was not involved in the details of the investigation,
11 which is the normal practice. When we have an investigations
12 they are done independently from the management, and I was made
13 aware of the allegations.

14 Q. Did you know at that time who had first approached HR and
15 initiated this?

16 A. No, I don't think at that time I was aware of that.

17 Q. At some point did you learn whether there were any
18 disciplinary actions taken against Ms. Hedges as a result of
19 the investigation?

20 A. Yes, absolutely, and I validated those decisions.

21 Q. In summary, what disciplinary actions did you end up
22 validating?

23 A. The first one was withdraw from any management
24 responsibility, so making sure she was not any more responsible
25 to manage people. Second, compensation already had been

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Descamps - cross

1 impacted, and put in a role where she would not have any
2 responsibility to manage people.

3 Q. Based on the conclusions of the investigation, did you
4 think those were appropriate disciplinary actions?

5 A. I think they were --

6 Q. Let me repeat my question. My question is: At that time
7 did you think that those were appropriate disciplinary actions
8 against Ms. Hedges?

9 A. They were appropriate disciplinary actions at the time
10 knowing what we were knowing at the time.

11 Q. Why do you say that?

12 A. Because further down the road other things came to light
13 and Ms. Hedges left the bank completely.

14 Q. During the time that you were managing HSBC at New York,
15 was sexual harassment an issue that you personally took
16 seriously?

17 A. I think it's a very serious issue that we always took very
18 seriously, absolutely, within our company.

19 Q. And was it important to you that the people underneath you
20 take any issues involving sexual harassment seriously?

21 A. Yes, it was very important, and it was part of the training
22 of people that in any case we would like to make sure that the
23 investigation process would work quickly and permanently.

24 Q. Now at some point -- I think you alluded to this -- but
25 Ms. Hedges was ultimately terminated?

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Descamps - cross

1 A. Yes.

2 Q. Did you approve that termination?

3 A. Yes.

4 Q. Why?

5 A. Once again, because I don't remember all the details, but
6 new allegations were brought to our attention. And also in her
7 new job, which was in some way much less of a role, she was not
8 managing a team, she was not doing the proper performance
9 either.

10 Q. Now at some point during this entire process did you learn
11 that Mr. Picarella made complaints about Ms. Hedges?

12 A. I learned about that. I don't remember exactly at what
13 time in that process.

14 Q. And at any point when you learned that Mr. Picarella had
15 been one of the people who had made complaints about
16 Ms. Hedges, did you personally feel any degree of anger or
17 being upset at Mr. Picarella?

18 A. No, absolutely not. As I said, we were encouraging people
19 to bring issues. The issues were real and happening, so
20 absolutely not.

21 Q. Did you personally feel upset that any actions had to be
22 taken against Ms. Hedges?

23 A. No, I didn't. I think it was the right thing to do. And I
24 think in particular the fact that she was managing people it
25 was very important to take an action.

GC9TPIC4

Descamps - cross

1 Q. Now when Ms. Hedges was removed from her supervisory
2 responsibility, do you know who ultimately replaced her?

3 A. For a few months Suzy White assumed the position, then
4 Ms. Carol Jenner was promoted to that role.

5 Q. Who is Carol Jenner?

6 A. Carol was working with us already for several years. She
7 was a business manager for a very specific team. She was
8 delivering a very strong performance in that role. She had
9 previously delivered also a very strong performance in a
10 previous role where was she was previously working in the
11 operational risk department where she had a lot of experience
12 and brought that experience to our team with that.

13 Q. Why is operational risk important in this business area?

14 A. Well, our business is made of -- a lot of the interaction
15 is day-to-day with the clients with the trading and the
16 markets, it's a business making probably thousands of
17 operations a day, so certainty we are doing that in a very
18 organized and processed way, and managing our risk is key to
19 our business. Beyond the credit risk and the market risk we
20 are running, the operational aspect of this business is
21 absolutely key.

22 Q. Now did you ultimately -- first of all, who recommended
23 Ms. Jenner to take that position?

24 A. I think Suzy White recommended her.

25 Q. Did you approve that recommendation?

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Descamps - cross

1 A. Yes, I did.

2 Q. Why?

3 A. I did it because I had interacted with Carol in several
4 meetings for projects. She was not working directly for me,
5 but I had seen her directly interacting and delivering on some
6 projects. She was doing very well. At the end, the sales team
7 she was working with was absolutely complimentary of her
8 performance, and we knew she could be in that role and do very
9 well.

10 Q. You were asked some questions on direct about an article in
11 the New York Post. During the time that that was -- this
12 article in the New York Post -- let me back up.

13 Why is it important for the bank to figure out if
14 someone was leaking confidential information in connection with
15 a meeting like the meeting that was at issue there?

16 A. Well, it's part of our processes to make sure when we have
17 interactions with the press we do that only in a very organized
18 way. We have people with the ability to talk to the press, and
19 communication from the HSBC group to the press should come
20 through those people so the organization was properly
21 communicating.

22 Q. When the ultimate decision was made to let Mr. Picarella
23 go, was the fact that there had been an investigation into a
24 leak a part of your decision?

25 A. No.

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Descamps - cross

1 Q. Now just going back for a moment to the promotion of
2 Ms. Jenner, at that time that Ms. Jenner was promoted did you
3 know anything about Mr. Picarella's reports of sexual
4 harassment?

5 A. Yes, I think the time I did, yeah.

6 Q. When you first decided -- when you first began discussing
7 whether or not Mr. Picarella would be terminated, who were the
8 people you were discussing this with?

9 A. The final meeting where we made the decision was a meeting
10 with Mike Karam, and Suzanne Roskell was there for sure.

11 Q. And what was, in summary, being communicated to you by
12 Mr. Karam and the other people that you were discussing this
13 with?

14 A. Well, I think what we discussed is we reviewed the last
15 four years of performance review of Mr. Picarella to discuss
16 the consistency of his review in a direction where the
17 performance was not at the right level, and that was the
18 essential basis by which we decided it was time to terminate
19 his employment.

20 Q. Did the fact that Mr. Picarella had made reports to HR
21 about sexual harassment play any role in your decision to
22 ultimately terminate him?

23 A. No, the decision was purely on the review of the
24 performance report.

25 Q. During the time that you were interacting with

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Descamps - redirect

1 Mr. Picarella's supervisors did you ever hear anyone say that
2 they had an intention to retaliate against Mr. Picarella?

3 A. No, absolutely not.

4 Q. Did you ever see anything suggestive of the idea that
5 someone wanted to try to retaliate against Mr. Picarella?

6 A. No.

7 MR. JACKSON: May I have one moment, your Honor.

8 (Pause)

9 MR. JACKSON: Your Honor, I don't have any other
10 questions.

11 Thank you very much, Mr. Descamps.

12 THE WITNESS: Thank you.

13 THE COURT: Any redirect?

14 MR. HUBBARD: Just a couple, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. HUBBARD:

17 Q. Mr. Descamps, before coming here today, in preparing for
18 your testimony did you have occasion to review any of
19 Mr. Picarella's actual performance reviews, mid-year or
20 year-end performance reviews?

21 A. In the recent days?

22 Q. Yes, sir.

23 A. No.

24 Q. At the time that you were having this meeting with
25 Mr. Karam and Ms. Roskell in considering Mr. Karam's

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Descamps - redirect

1 recommendation, I heard you say that you reviewed his
2 performance history.

3 A. Yes.

4 Q. Did you review his performance evaluations for '11, '12,
5 '13 and '14?

6 A. I don't remember the exact list of documents we reviewed,
7 but we reviewed the history and the main comments in those
8 reviews.

9 Q. And the history was good up until the last evaluation given
10 to him by Mr. Karam, was it not?

11 A. No, his history was not good.

12 Q. In 2011, what was his rating?

13 A. I think three, probably.

14 Q. Anything wrong with three?

15 A. Three is not -- three represent the rating we were more or
16 less giving to 70 percent of our population. So the rating
17 scale is going from one to five, and as a broad guidelines,
18 three represents 70 percent of the population. So three is a
19 very large spectrum, and you have people who are three and they
20 are delivering quite a strong performance not yet at the level
21 of two, and people rated three who are delivering also poor
22 performance compared to what we are expecting.

23 Q. Why did you write down -- beside their grading three, why
24 do you write the word "strong" down on the document that you
25 filed in your records if that is the case?

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1 A. This was the general HSBC process at the time, which has
2 changed since then, where beside the number there was one word,
3 one word. And this is not something at HSBC that is now part
4 of the process.

5 Q. In the year 2011 do you dispute the fact that
6 Mr. Picarella's rating was strong?

7 A. His rating was --

8 Q. Sir, can you answer yes or no? Do you dispute that his
9 rating --

10 A. I do not dispute he was rated three, which means strong in
11 our process.

12 Q. Thank you. 2012.

13 MR. JACKSON: Your Honor, I ask not to interrupt the
14 witness.

15 THE COURT: Overruled. Go ahead.

16 Q. Same question for 2012.

17 A. He was rated three probably in 2012, too.

18 Q. 2013?

19 A. Same thing.

20 MR. HUBBARD: Nothing further.

21 THE COURT: Okay, the witness is excused.

22 Plaintiff's counsel, you may call the next witness.

23 MR. HUBBARD: Your Honor, we have one witness left,
24 Mr. Karam. He is a longer witness, and so --

25 THE COURT: Hold on. Let's do this: Members of the

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1 jury, let's give you a six-minute break while we discuss some
2 scheduling matters. Don't discuss the case among yourselves or
3 with anyone else. See you soon.

4 (Jury not present)

5 THE COURT: Yes.

6 MR. HUBBARD: I misspoke. We have one witness left
7 today, that's Mr. Karam.

8 THE COURT: Right.

9 MR. HUBBARD: I can do his direct examination, it's
10 short, but I was thinking it would be better, since it's short
11 and if he's the last witness, took our lunch break and did
12 Mr. Karam and be through with this line-up for today. There
13 are a couple more witnesses for Monday, but your Honor, I can
14 do the direct now if you like or do it after lunch.

15 THE COURT: What is the concern? The concern is not
16 an issue -- seems you're prepared to do the direct examination,
17 it's simply a matter of you don't want to break up the direct
18 and cross over lunch?

19 MR. HUBBARD: Yes.

20 THE COURT: Defense counsel?

21 MR. JACKSON: Your Honor, I think it would be our
22 position we should go forward. We think we can complete the
23 direct and cross before lunchtime, so -- well, let me just
24 consult for one moment.

25 My understanding is that it's a very brief direct, but

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1 how long? Can we get an estimate of how long the?

2 MR. HUBBARD: Could be 20 minutes, 30 minutes. I
3 don't know what the witness will say, so --

4 MR. JACKSON: I may have underestimated, your Honor,
5 because I think we will need about 45 to 50 minutes.

6 THE COURT: Why is that for Mr. Karam? Can I hear an
7 offer of proof?

8 MR. JACKSON: Mr. Karam is Mr. Picarella's last
9 supervisor, who is a person who is going to talk about his
10 performance reviews, what led to his termination. He is
11 someone that we would be calling on the direct case even if not
12 called by the plaintiff. We're going to do his direct now
13 because he's being called now.

14 So we would leave it to the discretion of the Court.
15 We think we can do it at all -- regardless, we would be done
16 either around 1:00 or a little after 1:00 and the jurors could
17 go home for the day, but we leave it to the discretion of the
18 Court.

19 THE COURT: So I'm clear, counsels' estimate of the
20 time this will take on the direct and cross of Mr. Karam will
21 take no more than an hour and 15 minutes, is that fair to say?

22 MR. HUBBARD: I could say I don't think the direct
23 will take longer than 15 or 20 minutes. I could say that.

24 THE COURT: Okay. Perhaps what we can do is we'll
25 take an early lunch and ask the jury to get back here at 1:30

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1 and we should be able to finish. And that's the last witness
2 for today?

3 MR. HUBBARD: I think so.

4 THE COURT: Is that correct, defense counsel?

5 MR. JACKSON: Yes, your Honor.

6 THE COURT: No defense witnesses are here today?

7 MR. JACKSON: There is -- no, your Honor, there are --
8 no, there are none here today.

9 What originally was going to happen was Ms. Malanga
10 was going to testify, but plaintiff's counsel is not calling
11 her, so we're going to call her next week.

12 MR. HUBBARD: Ms. Roskell was coming, but she had a
13 medical procedure. She couldn't come today.

14 MR. JACKSON: So Ms. Roskell will be the last of
15 plaintiff's witnesses, who is relatively short, on Monday. And
16 we'll do our handful of witnesses, and I think we will be able
17 to complete them all on Monday.

18 THE COURT: Then perhaps what we could do -- I
19 understand plaintiff's counsel's concerns, I'm sure this jury
20 would like to go -- instead of breaking up the direct and cross
21 we could do a late lunch and maybe not even lunch, work
22 through, do the direct and cross and break for the day.

23 Let's do that. Does that work for everyone?

24 MR. JACKSON: It works for us.

25 THE COURT: If we need to take a 15-minute break we

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Karam - direct

1 could around 1 o'clock, but we probably won't, so let's go
2 ahead and go.

3 Let's bring the jury in.

4 (Continued on next page)

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Karam - direct

1 (Jury present)

2 THE COURT: Welcome back. Let's continue.

3 Plaintiff's counsel may call your next witness.

4 MR. HUBBARD: Thank you, your Honor, Michael Karam.

5 MICHAEL KARAM,

6 called as a witness by the Plaintiff,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q. Good morning or good afternoon, Mr. Karam, how are you?

11 A. Good afternoon.

12 Q. Can you tell us how you are employed today?

13 A. I'm the business manager for global markets sales for HSBC
14 Bank USA.

15 Q. Is that --

16 THE COURT: Let me ask the witness to, if you can,
17 move a little closer to the mike.

18 Go ahead, counsel.

19 MR. HUBBARD: Very good.

20 BY MR. HUBBARD:

21 Q. And we have seen some reference to that job as the old
22 Eileen Hedges job, the head of business development, is that
23 the position that you have today?

24 A. No.

25 Q. Was there a time when you had the job of head of business

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Karam - direct

1 development, the old Eileen Hedges job?

2 A. I'm not aware of Eileen Hedges' job. That is not part of
3 my portfolio or responsibilities.

4 Q. Tell us your current position.

5 A. The COO, chief operating officer, for the global markets
6 sales business for HSBC in the Americas. It's a regional role.
7 My responsibilities are to support our institutional sales
8 team. We're responsible for distributing HSBC financial
9 products to a wide range of customers, institutional banks,
10 brokers, pension funds, asset managers.

11 Q. Who was your predecessor?

12 A. Carol Jenner.

13 Q. Do you know who her predecessor was?

14 A. Not familiar with the roles and responsibilities and who --
15 if it was an exact match or not, no.

16 Q. Ms. Jenner was your predecessor?

17 A. Yes.

18 MR. HUBBARD: Let me have that demonstrative exhibit,
19 please, 2011 org chart.

20 Q. Were you working in global market sales in 2011?

21 A. No.

22 Q. Weren't you working in metals in 2012?

23 A. Yes, I was the business manager for the precious metals
24 business.

25 Q. This appears to be a September 2012 organizational chart

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Karam - direct

1 for Mr. Pizzimbono's global sales, global markets Americas
2 organization, right?

3 A. Yes.

4 Q. Were you in that organization in September of 2012?

5 A. No.

6 Q. When did you join that organization?

7 A. September of -- officially September of 2014, I believe.

8 Q. I see. Did there come a time in 2013 when you were -- just
9 a minute.

10 Let's look at this for a minute, 2012, Michael Karam,
11 SVP, business manager precious metals.

12 A. Correct.

13 Q. So September 2012, right?

14 A. Yes.

15 Q. How long did you keep that job SVP business manager
16 precious metals?

17 A. I was in that role for about nine years.

18 Q. When did it end?

19 A. September of 2014.

20 Q. In 2000 -- was Mr. Picarella ever in this group that we're
21 looking at now?

22 A. No.

23 Q. Did you ever manage him in this group?

24 A. Can you repeat the question?

25 Q. Did you ever manage him in any way in this group?

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Karam - direct

1 A. Clarify time frame?

2 Q. I will rephrase it.

3 He was never in this precious metals group that you
4 were the business manager?

5 A. No.

6 Q. Did there come a time in 2013 that you were asked to
7 become -- to succeed Ms. Jenner as Mr. Picarella's line
8 manager?

9 A. Yes.

10 Q. Who asked you to do that?

11 A. Management.

12 Q. How about any specific individual asking you to do that.

13 A. I don't recall specifically, but it was management.

14 Q. Suzy White?

15 A. She was a part of the discussion, yes.

16 Q. So did you take on that job in or about March -- let's say
17 May of 2013?

18 A. Yes.

19 Q. What's the first thing you did to start your relationship
20 with Mr. Picarella, please?

21 A. I had a meeting with him where I introduced myself because
22 I wasn't familiar or didn't know him well before then. And
23 over the succeeding weeks and so forth we began to work on some
24 agreed objectives and things that he would be responsible for
25 in carrying out in his role.

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Karam - direct

1 Q. And in 2014 when you changed jobs you continued to manage
2 him?

3 A. Yes.

4 Q. You managed him all the way up to the time he was
5 terminated?

6 A. Yes.

7 Q. Are you the person that recommended his termination to
8 Ms. White and Mr. Descamps?

9 A. I did not. I recommended the termination to Mr. Descamps.

10 Q. To Mr. Descamps?

11 A. Yes.

12 Q. Sometime in the early part of 2015?

13 A. Yes.

14 Q. In June of 2013 you were managing Mr. Picarella?

15 A. Yes.

16 Q. And you learned that he had filed a charge of
17 discrimination or retaliation with the United States Equal
18 Employment Opportunity Commission?

19 A. I knew of a filing, I wasn't specific -- I wasn't aware of
20 the specifics. I was aware there was a filing with the EEOC,
21 yes.

22 Q. Was that a problem? Did you consider that a problem?

23 A. No.

24 Q. Did you consider the allegations he made in that complaint
25 to be a problem?

GC9TPIC4

Karam - direct

1 A. Again, I'm not aware of the complaint itself, but I didn't
2 find the notice to be a problem, no.

3 Q. During the time you managed him in 2013, 2014 and 2015, did
4 you know that Mr. Picarella had made complaints to the human
5 resources function at HSBC?

6 A. Can you please clarify?

7 Q. Yes, sir. In the years 2013, 2014, and 2015, while you
8 were his line manager, did you -- were you aware that he had
9 made complaints of any kind to the human resources function
10 about other -- about the conduct of other employees or about
11 activities that affected him?

12 A. Again --

13 MS. LEVIN: Your Honor, objection.

14 MR. HUBBARD: I'll rephrase.

15 THE COURT: Okay.

16 Q. In the time period that you managed Mr. Picarella, '13
17 through '15, did you know that he had complained to human
18 resources about the sexual harassment of a colleague, a female
19 colleague on the business development desk?

20 A. Sorry, can you repeat the question again?

21 Q. Yes, sir. While you managed him, were you aware that he
22 had complained to HSBC human resources about the sexual
23 harassment of a female colleague?

24 A. During the entire tenure I managed him?

25 Q. Yes, sir.

GC9TPIC4

Karam - direct

1 A. Yes.

2 Q. When did you learn?

3 A. I don't remember specifically, but it was reported in the
4 press.

5 Q. And can you give us a time frame?

6 A. I don't remember specifically, no.

7 Q. When you took over his line management, did you have any
8 animosity toward him?

9 A. No.

10 Q. Did you develop any?

11 A. No.

12 MR. HUBBARD: Plaintiff's Exhibit 193, please.

13 Q. I'll ask you a few questions about this document. We'll go
14 down to the Sametime text.

15 A. I'm having a difficult time reading.

16 Q. That's exactly what I was going to say. There is a book
17 there in front of you but your microphone is on top of it. Can
18 you find volume two? Maybe we can help you.

19 Volume two, and let's look at tab 193. I will give
20 you a minute to look at it.

21 MR. HUBBARD: Peter go to 11:24 and highlight that
22 comment, 11:24:19.

23 A. Okay.

24 Q. Fair to say this is the Sametime Chat --

25 A. Yes.

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Karam - direct

1 Q. -- transcript. These are instant messaging sort of
2 transcripts?

3 A. It's internal to HSBC.

4 Q. And date of this is June 7, 2013. And is it fair to say
5 that this says it's involving Ms. Jenner and you?

6 A. Yes.

7 Q. Let's start there with where Ms. Jenner says hello, and
8 then she says: I need to write this response email to MP. I
9 want to write a response as to sufficiently address his point
10 so that I am not engaged in a back and forth on email nor have
11 to deal with this again at the Monday BCC.

12 Do you see that?

13 A. Yes.

14 Q. Can you tell us from your own experience who MP is?

15 A. I believe it's Mr. Picarella.

16 Q. If you read down with me I will try to use the screen and
17 you can use the exhibit there, please.

18 Go down to 11:24:31 Ms. Jenner says -- sorry, 11:24:24
19 Ms. Jenner says: How is this?

20 MR. HUBBARD: You got to come down some,
21 Mr. Fitzgerald.

22 Q. 11:24:24. Carol, Ms. Jenner: How is this?

23 Then she says: Mike, I will update the attendee list
24 to reflect your participation.

25 Does she appear to be suggesting to you what the

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Karam - direct

1 language of her communication would be?

2 A. I would say so, yes.

3 Q. And she says: Mike, I will update the attendee list to
4 reflect your participation that is well documented in the
5 detailed minutes. I have to add Suzy as well. Regarding your
6 second point, I will clarify the minutes as follows. From
7 speaking with Mike Karam, it sounds like several of these
8 accounts were found to have RMs.

9 Then there's a quote beneath that, you see beginning
10 with MP and RH? Right there. You see where the quotation
11 marks begin MP and RH with COBAM?

12 Okay? You see that?

13 A. Yes.

14 Q. If you go to 11:25:52 you say: I would say the following.
15 No need to explain yourself.

16 Then you then apparently propose some language, fair
17 enough, for her letter or email. Mike, I will update the
18 attendee list to reflect your participation that is well
19 documented in the detailed minutes. There are other attendees
20 that I need to add as well. Regarding your second point, I've
21 updated the minutes to reflect that the accounts are remaining
22 from the Topaz exercise. Thanks for help on this.

23 Then you say: Feel free to drop the thanks.

24 You wrote that part, right?

25 A. Yes.

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Karam - direct

1 Q. She says: Okay, I like that. Should I copy you in? You
2 say: No. She says: Cool, thanks. She says: I really need
3 to gets some chutzpah but this situation gives me the willies.
4 You say: You have plenty of it, just use it. She says: True.
5 You say: Feel free to bounce them off me. CC me. You say:
6 If he responds, we'll marginalize his behavior.

7 What type of conduct or activity did you envision you
8 would use to marginalize Mr. Picarella's behavior?

9 A. Sorry, can you --

10 Q. What did you envision you would do to marginalize his
11 behavior?

12 A. Nothing specifically.

13 Q. Is there anything good about an employee getting his
14 activities or his conduct marginalized by his manager?

15 A. Well, Mr. Picarella -- Carol Jenner was having issues with
16 managing Mike, that's why -- part of the reason why I assumed
17 responsibilities for him. This was a period where I was
18 managing him and there was a continuing dialogue at that time
19 that was contentious between him and Carol.

20 Q. You would agree --

21 THE COURT: Hold on. You asked the question, let him
22 finish.

23 A. It was a important for me to assert myself as his manager,
24 and it was important for me also that I'm aware of these
25 discussions and this back and forth that he had with Ms. Jenner

GC9TPIC4

Karam - direct

1 who had moved on to other responsibilities in a different role.

2 Q. By marginalizing his behavior you were sorting setting him
3 aside?

4 A. No.

5 Q. Did you meet with Mr. Picarella after you became his
6 manager in May of 2013?

7 Did you meet with him at any time in the summer that
8 year, in June, July or August, to discuss his job?

9 A. Again, my communications and meetings with him were
10 frequent. Many of them were ad hoc, but yes.

11 Q. So you met with him -- if I understand, you met with him
12 frequently in June, July and August of 2013?

13 A. What do you mean by meeting?

14 Q. Telephone meeting, in-person meeting, any kind of meeting.

15 A. Yes.

16 Q. You did?

17 A. Yes.

18 Q. And they were frequent?

19 A. Yes.

20 MR. HUBBARD: 205, please, PX-205.

21 I believe this is in evidence, your Honor.

22 Q. This is an email from Mr. Picarella dated September 23,
23 2013, to Ms. Bilbrey?

24 THE COURT: Hold on a second, is 205 in evidence?

25 MS. LEVIN: Yes.

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Karam - direct

1 THE COURT: Go ahead.

2 Q. This is an email from you -- I mean from Mr. Picarella,
3 dated September 23, 2013, to Ms. Bilbrey, Mr. Alderoty, and to
4 you, is that correct?

5 A. Yes.

6 Q. He says: Hi Mary, Mike and Carol have not met with me or
7 spoken with me in person in approximately three months, or
8 about the time of my filing with the EEOC. At the same time
9 frame of my filing with the EEOC, Mike Karam has participated
10 in continued retaliation against me by assuming my role of
11 coordinating business case approvals and prioritization with
12 Pablo Pizzimbono and the relationship managers.

13 My question to you is: When you received this email
14 from Mr. Picarella, did you write to Ms. Bilbrey or
15 Mr. Alderoty or anybody and say that the assertion that I have
16 not met with him in person in three months or about the time of
17 the filing of the EEOC was not accurate?

18 A. I don't recall what form of action I would have taken on
19 the back of this email.

20 MR. HUBBARD: 209, please.

21 I believe this is in evidence, your Honor. Let me
22 make sure.

23 Q. It's also in volume two there, Mr. Karam, tab 209. Maybe
24 the stuff starts on the second page.

25 Let's go to the bottom of the second page, please,

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Karam - direct

1 sir. And I think at the bottom of the second page you will see
2 that there's an email from Mr. Rose to you.

3 A. Yes.

4 Q. This says -- it's from Rose to you dated October 17, 2013,
5 and the subject is Suzy Didier. Who are Suzy and Didier?

6 A. Suzy was the chief operating officer for the global markets
7 business, Didier was the head of global markets in the
8 Americas.

9 Q. And it says: Mike, please can you prepare a list of items
10 today which are on the aboves radar which I need to be prepared
11 for tomorrow. Thanks.

12 This was written to you. Who was Mr. Rose?

13 A. Mr. Rose at the time was the co-head of the global precious
14 metals business for HSBC.

15 Q. Located where? Where was his office?

16 A. London.

17 Q. Did you understand why he was asking for these items to be
18 prepared for tomorrow?

19 A. Yes.

20 Q. What was the reason?

21 A. He had -- in his visits to the U.S. he would meet with
22 senior management in the global markets businesses, and as the
23 COO for the global precious metals business I would prepare for
24 him things that we're working on, things on the radar, just so
25 he was familiar with them and was able to be prepared to speak

GC9TPIC4

Karam - direct

1 to them in the event that the issue would have arose or a
2 discussion would have ensued.

3 MR. HUBBARD: Can we get to the next email,
4 Mr. Fitzgerald, starts at the bottom of page 1, for Mr. Karam.

5 Q. So you see here at 22:30, October 17, this is you respond
6 there, Mr. Karam, starting at the bottom of the first page,
7 going to the second page, you say: Dave, the big issue on
8 their radar is this certificate issue. Will provide you an
9 update in the AM on that status. The other is custody and
10 clearing transfer.

11 Do you see that?

12 A. Yes.

13 Q. Finally Suzy had asked that I help out on the sales issues.
14 It may be good for you to leverage that ask into some good
15 will.

16 What had Suzy asked you to do on the sales issues?

17 A. Again, I think May of 2013 she asked me to oversee aspects
18 of the sales business management role, including managing Mike
19 Picarella.

20 (Continued on next page)

GC99PIC4

Karam - direct

1 Q. Was that all the sales issues that you're referring to
2 here?

3 A. Yes.

4 Q. So you believed at that time that the work you were doing
5 to manage Mr. Picarella was one of these items on Ms. White's
6 radar screen?

7 A. Not specifically, no. There were -- it was a broad --
8 broad responsibilities.

9 Q. But was it on her radar screen?

10 A. Can you please clarify what you mean.

11 Q. Yes. Was it something you were reporting to her on?

12 A. When I was asked by management. They had asked me to
13 oversee that -- those responsibilities.

14 Q. Sir, at this time in October of 2013 were you reporting to
15 Ms. White on the development of your oversight of
16 Mr. Picarella?

17 A. I have a functional reporting line in to Suzy and I have
18 always had one in to Suzy.

19 Q. That was not my question.

20 My question is were you in that period of time
21 reporting to Ms. White specifically about your oversight of
22 Mr. Picarella?

23 A. Nothing specifically, no.

24 Q. In any way?

25 A. Generally, yes.

GC99PIC4

Karam - direct

1 Q. Let's go to the next e-mail, please.

2 In the middle of the first page there, Mr. Karam,
3 please on the first page of this exhibit, Mr. Rose writes you
4 back, 4:45 p.m. re: Suzy/Didier. He says: Okay. Speak
5 t-o-m. Sales issues?

6 Right?

7 A. Yes.

8 Q. And right above it you respond?

9 A. Yes.

10 Q. And your response is: Picarella, the HR related problem.

11 Right?

12 A. Yes.

13 Q. After you wrote that did you explain to Mr. Rose what
14 the -- what Mr. Picarella's HR related problem was?

15 A. I don't remember specifically, no.

16 Q. What was the problem?

17 A. Well by this time it was again reported that he had filed
18 issues against HSBC with the notice on the EEOC complaint.
19 There may have been some ensuing -- it's hard to place specific
20 timelines around this.

21 Q. Was that viewed to be a problem at HSBC?

22 A. I wouldn't say it's a problem at HSBC. It was an issue
23 that we were dealing with.

24 Q. So it was viewed to be a problem?

25 A. Again, I don't view it as a problem. It was an issue that

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Karam - direct

1 we were working through.

2 Q. You wrote to the most senior management in your group that
3 he was an HR related problem, correct?

4 A. Yes.

5 Q. Did you tell anybody other than Mr. Rose, Didier,
6 Ms. White, that you viewed him as an HR problem?

7 MS. LEVIN: Objection, your Honor.

8 THE COURT: Please rephrase the question.

9 Q. Did you tell anybody other than Mr. Rose that you viewed
10 him as an HR problem?

11 A. I don't recall specifically, no.

12 MR. HUBBARD: PX-214, please.

13 THE COURT: Is 214 in?

14 MR. HUBBARD: I'm not sure, your Honor.

15 May I move 214.

16 MR. BORTNICK: It's not in.

17 MS. LEVIN: No objection, your Honor.

18 THE COURT: 214 is in.

19 (Plaintiff's Exhibit 214 received in evidence)

20 Q. Look at the first page. Do you have it there in your book,
21 Mr. Karam?

22 A. Yes.

23 Q. Let's look at the top. There this appears to be a Sametime
24 message involving you and Mr. Kartik, right?

25 A. Yes.

GC99PIC4

Karam - direct

1 Q. I gather he was a business colleague?

2 A. Yes.

3 Q. And the date here is January 29, 2014. You are still
4 managing Mr. Picarella, right?

5 A. Yes.

6 Q. Would you turn with me to the third page of this exhibit.
7 And the top line there is the -- the top line there it says --
8 do you see the top line where it says: Michael Karam. This
9 Iran deal. Do you see that?

10 A. Yes.

11 Q. Let's go down a couple lines, please. And there is one,
12 two, three, four, five blurbs down it says: Michael Karam, a.
13 Role has come up in sales BM working for Pablo and I'm most
14 likely looking to take it.

15 Do you see that?

16 A. Yes.

17 Q. You say regional role. Cross product. It's the old Eileen
18 Hedges and now Carol Jenner role. Was that accurate at the
19 time you wrote it?

20 A. Yes.

21 Q. So the role you took was the old Eileen Hedges, Carol
22 Jenner role?

23 A. No.

24 Q. Okay. You say beneath that: It's broken. High profile.
25 And may be a relatively easy fix.

GC99PIC4

Karam - direct

1 Go on down.

2 And if we go to the top of the next page, please, sir.

3 There it -- 12:58:57 p.m. Michael Karam. I've been working
4 with them on this whole Mike Picarella situation and have
5 developed a limited engagement with him.

6 Do you see that?

7 A. Yes.

8 Q. You go down a couple of blurbs and you say: Suzy and
9 Didier are extremely supportive of the move.

10 Right?

11 And Mr. -- your colleague says: You have backing of
12 Suzy and Didier.

13 And you say: Pablo.

14 And he says: The profile is higher.

15 And it goes on.

16 Do you recall that discussion in January of 2014?

17 A. I do now.

18 Q. And that was essentially about the new role that you were
19 being asked to take?

20 A. Yes.

21 Q. When did you assume the new role?

22 A. September 2014.

23 Q. Mr. Karam, is that the same one that you now have?

24 A. Yes.

25 MR. HUBBARD: 305, please. This document is in

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Karam - direct

1 evidence, I believe, your Honor.

2 Q. You have to go to another book, Mr. Karam, to get this one.
3 It might be volume three.

4 MR. HUBBARD: Will this go all on one -- stop right
5 there. Yes.

6 Q. What is this document, please, sir?

7 A. It appears to be guidance on the rating systems for
8 reviews, performance reviews.

9 Q. There came a time in November of 2014 when you gave
10 Mr. Picarella a midyear review, I think. And you rated him
11 off-track?

12 A. I don't remember specifically the timeframe.

13 Q. But there's a time in November 2014 when you provided a
14 performance review to Mr. Picarella and actually met with him
15 to review it. Do you recall that?

16 A. A review, yes. I met with him.

17 Q. And do you recall that that review was off-track?

18 A. Again, I'd have to see the review. I don't remember
19 specifically what the review was.

20 Q. Assume with me for a moment that you gave him an off-track
21 review, okay.

22 MS. LEVIN: Objection, your Honor.

23 THE WITNESS: I'd like to see the review.

24 THE COURT: Sustained.

25 MR. HUBBARD: 235, please.

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Karam - direct

1 THE WITNESS: There isn't a 235 in this book.

2 MR. HUBBARD: Yes.

3 Go down to the rating section.

4 THE COURT: The witness indicates he doesn't have 235.

5 MR. HUBBARD: I think that's right, your Honor. The
6 best I can do is the screen. I'll find a hard copy if you bear
7 with me just a moment. What's the exhibit number, 235. I
8 don't think I have a very good copy.

9 THE COURT: Is 235 in?

10 MR. HUBBARD: Yes, your Honor, I think it is.

11 THE COURT: I don't believe 235 is in.

12 MR. HUBBARD: Move the admission of 235.

13 MR. BORTNICK: It's already in.

14 MR. HUBBARD: We think it's in evidence, your Honor.

15 THE COURT: Is this DX or PX-235.

16 MR. BORTNICK: PX-235.

17 THE COURT: Is there any objection to 235?

18 MR. JACKSON: Your Honor there is a similar document
19 that's 236 that is in that I think is the appropriate
20 non-objected document.

21 MR. HUBBARD: Do you have 236, Peter? I think they're
22 identical, Judge.

23 Can we have the top?

24 THE WITNESS: 236?

25 THE COURT: Yes. 236.

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Karam - direct

1 Q. Take a look at that and if you go over a few pages and find
2 the mid year summary section.

3 MR. HUBBARD: Go back up, Peter. Just right above
4 what you had. It says mid year summary right there. Yes.

5 Q. Just look at the checkpoint, please, for me, Mr. Karam.

6 (Pause)

7 Q. Are you reading it, sir?

8 A. Yes.

9 Q. Had you finished?

10 A. Not yet.

11 (Pause)

12 A. Okay.

13 Q. When was the last time you read it, sir?

14 A. I don't recall.

15 Q. How many times did you read it in the last week?

16 A. I don't recall.

17 Q. How many times did you read it preparing for your testimony
18 here today?

19 A. I don't recall.

20 Q. What does it say at the top at checkpoint?

21 A. Off-track.

22 Q. Is this the off-track review you gave Mr. Picarella on or
23 about November 21 of 2014?

24 A. Yes.

25 Q. This is the one you presented to him in the conference room

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Karam - direct

1 at the office?

2 A. Yes.

3 MR. HUBBARD: Peter, I want to go back to the
4 off-track. Take this down.

5 THE WITNESS: What number was that?

6 THE COURT: He hasn't said.

7 MR. HUBBARD: The exhibit number, sir, is 305. It's
8 in that third book.

9 This is in evidence, your Honor.

10 THE COURT: Yes.

11 Q. Would you take a look at this for a moment, please, sir,
12 305.

13 A. Okay.

14 Q. Are you familiar with this rating description?

15 A. Yes.

16 Q. Let's look down the bottom of the top section you see where
17 it says: Off-track employees should have a performance
18 improvement plan, PIP, with clearly documented actions.

19 Do you see it?

20 A. Yes.

21 Q. When did you give Mr. Picarella his performance improvement
22 plan?

23 A. I wasn't able to.

24 Q. You couldn't find him in the office to give it to him?

25 A. No. The performance improvement plan is a subsequent

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Karam - direct

1 action that happens -- that we put in place after the review.

2 Preliminarily we have the review -- we have the discussion, the
3 review, and then if off-track we would put a performance
4 improvement plan after that.

5 Q. I see. Okay. Were you able to mail it to him?

6 A. I don't know about that. I don't know how practical it is.
7 The way our -- the way our relationships are with employees
8 specifically around something as important as a performance
9 improvement plan, I like to view that as a negotiated document.
10 It has to be very, very clear to the employee as well as to the
11 manager that we're both on the same page. Something so
12 impersonal about writing something up and mailing it being one
13 way is not my style.

14 Q. Did you draft a performance improvement plan for
15 Mr. Picarella?

16 A. Well, Mr. Picarella --

17 Q. You can explain. Just tell me if you drafted a performance
18 improvement plan for him.

19 A. (No response).

20 Q. Just yes or no.

21 A. He had very specific objectives.

22 Q. That was not my question.

23 A. And he had very specific --

24 THE COURT: Hold on. He's asking a yes-or-no
25 question. If you can answer it yes or no, answer it yes or no.

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Karam - direct

1 If you can't just say you can't.

2 Restate the question again, counsel.

3 Q. Just very simply did you draft at or about this time a
4 performance improvement plan for Mr. Picarella?

5 A. No.

6 Q. Did you evaluate his performance in any way after your
7 meeting with him on the 21st of November of 2014?

8 A. Yes.

9 Q. How?

10 A. Would you please clarify. What do you mean by how?

11 Q. What performance was he doing after that meeting?

12 A. Well he continued to carry out tasks and in certain
13 instances he demonstrated weaknesses and those were highlighted
14 to him.

15 Q. How did you do that when he wasn't in the office?

16 A. I don't recall specifically but communications via e-mail
17 or phone but I don't remember specifically how they were
18 carried out.

19 Q. Sir, you never saw Mr. Picarella at HSBC after November 21
20 of 2014, did you?

21 A. I don't believe so, no.

22 Q. How did you evaluate his performance?

23 A. Again, he was still responsible to carry out his role
24 working from home. He continued to demonstrate weaknesses in
25 carrying out those objectives and he continued to fail all

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Karam - direct

1 those objectives. And when those instances were -- happened I
2 would highlight them to him typically via e-mail or maybe in a
3 phone conversation. I don't recall specifically what the
4 communications medium was with him.

5 Q. Did any of those failures take place in the month of
6 December 2014?

7 A. Yes.

8 Q. Did you know in the month of December 2014 if he had access
9 to the HSBC systems?

10 A. Yes.

11 Q. Don't you know that his access was suspended when he was
12 told to work from home?

13 A. No.

14 Q. You didn't know that?

15 A. No.

16 Q. You certainly didn't communicate with him in any way
17 between the time of that meeting and December 18 of 2014 when
18 his access was restored, did you?

19 A. I don't recall my -- specifically had I or had I not. I
20 can't answer that. I don't remember.

21 Q. What was the performance that you were evaluating and
22 finding to be deficient after January 15 of 2015?

23 A. Well for starters he was responsible to collate sales
24 commentary on a weekly basis from the very various sales
25 managers. It was important work that we would collect

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Karam - direct

1 information about business markets, any issues that had arisen.
2 And that information would be consolidated into a report that
3 would be shared with senior management in London.

4 So there are instances where that wasn't being carried
5 out. There were some issues regarding his access and him not
6 having the right protocols even though, you know, we thought or
7 we understood that he had the privileges to log in from home to
8 do his work. But clearly that wasn't happening.

9 MR. HUBBARD: Give me the Marshall letter please,
10 Peter. I don't know the number. The January 15 letter to me
11 from Mr. Marshall. 244. Would you blow it up.

12 Q. Would you look at tab 244. It would be in volume three,
13 Mr. Karam.

14 You knew that this gentleman who you were supervising,
15 Mr. Picarella, you knew as of January 15, 2015 that he had been
16 placed on paid administrative leave and that his access to
17 HSBC's systems and premises had been suspended, did you not?

18 A. No.

19 Q. You never laid eyes on him or worked with him or spoke to
20 him after this date, did you?

21 MS. LEVIN: Objection, your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: I don't recall specifically what would
24 have transpired -- the timeframe of me communicating with him.

25 Q. But, sir, you've told us that his performance continued to

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Karam - direct

1 deteriorate after you were meeting with him -- the truth is
2 that you didn't have a single contact with him after
3 November 21 of 2014; is that correct?

4 A. No. I don't believe that to be true.

5 MR. HUBBARD: Nothing further, your Honor.

6 THE COURT: Any cross-examination?

7 MS. LEVIN: Yes, your Honor. We will have
8 cross-examination.

9 THE COURT: Proceed.

10 MS. LEVIN: Your Honor, I have a binder of documents
11 for the witness. May I approach, please?

12 THE COURT: Yes.

13 MS. LEVIN: Your Honor, I also have a number of
14 documents that I'd like to move into evidence if the Court were
15 to find that more efficient.

16 THE COURT: That's fine. What are the numbers please.

17 MS. LEVIN: DX-228.

18 MR. HUBBARD: Go slow, your Honor. 228.

19 MS. LEVIN: 228.

20 MR. HUBBARD: No objection.

21 MS. LEVIN: DX-235.

22 MR. HUBBARD: No objection.

23 MS. LEVIN: DX-243.

24 MR. HUBBARD: No objection, your Honor.

25 MS. LEVIN: DX-245.

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Karam - cross

1 MR. HUBBARD: No objection.

2 MS. LEVIN: DX-251.

3 MR. HUBBARD: No objection.

4 MS. LEVIN: DX-258.

5 MR. HUBBARD: No objection.

6 MS. LEVIN: DX-263.

7 MR. HUBBARD: No objection.

8 MS. LEVIN: DX-265.

9 MR. HUBBARD: No objection.

10 MS. LEVIN: DX-268.

11 MR. HUBBARD: No objection.

12 MS. LEVIN: And DX-275.

13 MR. HUBBARD: No objection.

14 THE COURT: Okay. So DX-228, 235, 243, 245, 251, 258,
15 263, 265, 268, and 275 are all in evidence without objection.
16 Go ahead, counsel.

17 (Defendants' Exhibits 228, 235, 243, 245, 251, 258,
18 263, 265, 268, and 275 received in evidence)

19 MS. LEVIN: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MS. LEVIN:

22 Q. Good afternoon, Mr. Karam.

23 A. Good afternoon.

24 Q. Mr. Karam how many years have you worked in the financial
25 services industry?

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Karam - cross

1 A. About 21.

2 Q. And how many years have you worked at HSBC?

3 A. Just over 15 years.

4 Q. Could you briefly describe for us your current
5 responsibilities at HSBC as the business manager for global
6 sales?

7 A. Sure. My responsibilities are to support our institutional
8 sales force. So within HSBC we have sales people that are
9 responsible for distributing financial products to, again,
10 pension funds, mutual funds, brokers, banks. And within that
11 team I'm responsible for the day-to-day operations, working on
12 issues that they would have resolving customer -- customer
13 concerns, issues with HSBC's infrastructure getting
14 confirmations or settlements or -- a whole host of things.
15 Basically responsibilities for the operation of the business
16 without actually conducting business.

17 Q. Do you currently supervise employees at HSBC?

18 A. Yes.

19 Q. How many?

20 A. Four.

21 Q. What was Mr. Picarella's title during the period that you
22 supervised him?

23 A. Senior vice-president.

24 Q. Were you also a senior vice-president?

25 A. Yes.

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Karam - cross

1 Q. Does that mean that you and Mr. Picarella were peers?

2 A. No. Mr. Picarella reported to me.

3 Q. Is it common at HSBC that one senior vice-president would
4 report to another senior vice-president?

5 A. Sure.

6 Q. Would you describe just briefly and generally what
7 Mr. Picarella's responsibilities were as a senior
8 vice-president at HSBC?

9 A. Sure. All my business management team, we had broad
10 responsibilities for about 150 different sales people across
11 multiple financial products. Mr. Picarella's responsibilities
12 were to assist in a portfolio of work within that space, very
13 specific items that he was fully responsible for. But as a
14 team we would deal with issues as they arose on a daily basis.

15 THE COURT: Just one moment. Members of the Jury stay
16 patient. Let me just see counsel in the robing room for a
17 second. We don't need to have the court reporter. I just want
18 to discuss some scheduling matters with you.

19 (Robing room discussion off the record)

20 THE COURT: So, Members of the Jury, here's what we're
21 going to do. We're going to break for lunch now. I'd ask you
22 to come back at 2:10. Don't discuss the case with anyone else.
23 Don't discuss the case amongst yourselves. As I've told you
24 before we will go no later than 4 o'clock today. So have a
25 great lunch. We'll see you at 2:10.

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Karam - cross

1 (Jury excused)

2 THE COURT: Okay. So let's have counsel come back by
3 two to avoid any unnecessary bumping into jurors. See you
4 then.

5 MR. JACKSON: Your Honor.

6 THE COURT: Everyone can sit down. That's fine.

7 MR. JACKSON: May we ask that Mr. Karam be excused
8 until -- for the moment, into the hallway.

9 THE COURT: Well we can have him excused. I'll ask
10 him to go into the robing room because the jurors will be
11 walking in the hallway. That's fine. Is there something you
12 want to discuss concerning his testimony?

13 (Witness excused)

14 THE COURT: Go ahead, counsel.

15 MR. JACKSON: Thank you, Judge. I just wanted to
16 raise very briefly during Mr. Karam's direct there was a
17 point where Mr. Hubbard highlighted something in one of the
18 communications about the Iran deal. I don't see how that adds
19 any relevance to the case and I just want to clarify that
20 that's not going to be something that plaintiff's counsel is
21 going to be further highlighting during the course of the case.
22 To me seemed just like an extraneous piece of information that
23 adds no relevance to anything.

24 MR. HUBBARD: It was not offered for any purpose other
25 than find the place on the page. I don't think anybody thought

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1 that anybody was offering any evidence related to that at all.
2 It was just to find the place on the page to start reading.

3 THE COURT: Okay.

4 MR. JACKSON: That's fine. It's just politically
5 sensitive stuff. I don't think it's relevant. If we have an
6 agreement that that's not going to be further highlighted, it's
7 not going to be highlighted in summations, then I don't have
8 any further issue.

9 MR. HUBBARD: Absolutely.

10 THE COURT: Okay. I will note I didn't notice that
11 when that was highlighted. I don't know the jurors are
12 necessarily making that kind of connection to any sort of
13 political Iran deal or just some Iranian deal somehow related
14 to some business activity at the bank.

15 MR. JACKSON: Completely possible, your Honor, which
16 is we why we didn't offer any objection. There is no need to
17 highlight it. I just wanted to confirm I don't see any
18 relevance. So that's the end of the issue, your Honor.

19 THE COURT: I'll let Mr. Karam come out and I'll have
20 counsel come back at 2 and we'll start at 2:10.

21 (Luncheon recess)
22
23
24
25

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1 AFTERNOON SESSION

2 2:09 P.M.

3 (Jury not present)

4 MR. JACKSON: Just to update the Court on the issue we
5 were discussing before. There were a couple of other comments
6 in that chat we were discussing that were not relevant. We had
7 made a 403 objection in our pretrial order, but we think the
8 document is admissible for its purposes. We're prepared to
9 redact a copy of PX-214, which we've shared with plaintiff's
10 counsel and I think we have a basic agreement that that's going
11 to be fine for the document to actually be admitted into
12 evidence.

13 THE COURT: Plaintiff's counsel.

14 MR. HUBBARD: No objection. I want a chance to look
15 at it over the weekend. But it looks fine with me. We can
16 substitute.

17 THE COURT: Good. Just waiting for all the jurors to
18 reassemble and we'll continue.

19 MR. HUBBARD: Are we off the record, Judge?

20 THE COURT: Yes. We're on the record. Yes.

21 MR. HUBBARD: On the record, yes.

22 THE COURT: Do you need to say something off the
23 record?

24 MR. HUBBARD: No. No. No. Chitchat. Just
25 chitchatting.

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1 MR. BORTNICK: Could we get that lowered a little bit
2 especially when the sun comes out of the clouds, right in our
3 faces, myself and Ms. Palmieri.

4 THE COURT: You want to get what done?

5 MR. BORTNICK: The curtain.

6 MR. HUBBARD: We can do it. She had a pull the other
7 day for it.

8 Thank you.

9 THE COURT: We might as well ask the witness to come
10 on up to the witness stand.

11 MICHAEL KARAM, resumed.

12 (Continued on next page)

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Karam - cross

1 (Jury present)

2 THE COURT: Welcome back. Hope you had a pleasant
3 lunch. Let's continue with the case on trial. Go ahead,
4 counsel.

5 CROSS-EXAMINATION CONTINUED

6 BY MS. LEVIN:

7 Q. Welcome back, Mr. Karam.

8 A. Thank you.

9 Q. Hope you had a chance to get some lunch.

10 Mr. Karam before lunch we were discussing the fact
11 that in approximately mid 2013 you became Mr. Picarella's
12 supervisor, correct?

13 A. Yes.

14 Q. How would you describe your interactions with
15 Mr. Picarella?

16 A. Would you mind please clarifying.

17 Q. Sure. Were your interactions with Mr. Picarella cordial?

18 A. Yeah. In the beginning. When we commenced the
19 relationship, as a --

20 Q. When you would have an in-person meeting with Mr. Picarella
21 how would those meetings generally begin?

22 A. Very cordial. Professional. We shared some common
23 interests. We both had families. I know Michael had, I
24 believe it was four children. And two of mine were similar in
25 age. So we'd exchange stories about family interests. They

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Karam - cross

1 were into sports. Mine were beginning to play soccer. They
2 weren't taking to it. And I know he had -- I think he was
3 coaching Little League or he was active within sports. I
4 wasn't very active at all. So, it was very cordial, discussing
5 family.

6 In some instances we had -- I felt a common connection
7 through religious beliefs, you know. Mike was very religious.
8 I'm also very religious. And he was telling me, we would
9 discuss some of his trips in an instance one of them to Texas
10 to a mission.

11 Q. Let's look at PX-193 which is one of the documents that
12 Mr. Hubbard reviewed with you earlier.

13 It's actually not in that binder, Mr. Karam. It's one
14 of the ones that plaintiff's counsel looked at with you. You
15 can also look at it up on the screen if you'd like.

16 A. Sure. Okay.

17 Q. Earlier Mr. Hubbard asked you about this chat with
18 Ms. Jenner. Were you friendly with Ms. Jenner?

19 A. Yes. We had a relationship. She used to support us in a
20 previous role. So she was a support partner of mine in my
21 previous role as the business manager of precious metals.

22 Q. In this chat it looks like you're trying to be a
23 soundingboard for Ms. Jenner, give her advice perhaps on an
24 e-mail she was drafting to Mr. Picarella?

25 MR. HUBBARD: Objection, your Honor.

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Karam - cross

1 THE COURT: Please rephrase the question.

2 Q. What were you trying to do in this chat with Ms. Jenner?

3 A. Again, I knew Ms. Jenner. We had worked together for a
4 long time and she was running this response by me.

5 Q. Why did you make the comment about marginalizing his
6 behavior?

7 A. Again, I knew there was -- there was a somewhat contentious
8 relationship with him with Ms. Jenner and I felt, without
9 having the source document as to what this was in reference to
10 specifically, is that she clearly was agitated by whatever he
11 had -- was asking her. And I felt it was appropriate as being
12 his manager again for me to assert myself as his manager in
13 working through any of these issues.

14 Q. What do you mean by a contentious relationship?

15 A. I don't recall the specifics of it again. But I knew that
16 there was -- there was a bit of friction between them. And for
17 her it was -- it was an issue where she was having -- she was
18 having a difficult time dealing with him.

19 MS. LEVIN: Let's look at PX-214. Page four at the
20 top.

21 Q. Mr. Karam this is another chat that you looked at earlier
22 today with Mr. Picarella's attorney. We'll highlight the
23 portion for you.

24 Why were you making a comment about the whole Mike
25 Picarella situation?

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Karam - cross

1 A. Again through various press reports and so forth. There
2 was a bit of publicity around this. And I was just making a
3 comment that I was at the time managing him. And that was my
4 interaction with the sales management role.

5 Q. You're referring to press coverage of Mr. Picarella's
6 lawsuit against HSBC?

7 A. Yes.

8 Q. Was Mr. Picarella usually in the office when you would
9 expect him to be?

10 A. Not typically, no.

11 Q. Did you receive complaints from others at HSBC that they
12 were having trouble locating Mr. Picarella?

13 A. Yes. From time to time I would have complaints where
14 people couldn't get ahold of him.

15 Q. Are employees generally notified -- required to notify
16 their managers that they will be out of the office?

17 A. Absolutely.

18 Q. And they should notify their managers in advance if they're
19 going to be out of the office, correct?

20 A. Yes. It's important to make arrangements with your manager
21 if you're planning on being out of the office.

22 Q. Were there times when Mr. Picarella was out of the office
23 and had failed to notify you in advance?

24 A. Yes.

25 Q. That happened on more than one occasion?

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Karam - cross

1 A. Yes.

2 Q. When Mr. Picarella was in the office did you have a
3 difficulty getting ahold of him?

4 A. At times, yes.

5 Q. Approximately how many times per day would you go by his
6 desk?

7 A. Well he sat on an adjoining floor and we maintained our
8 office on that floor. So I'd say 20, 25 times a day.

9 Q. Would you sometimes find that Mr. Picarella was nowhere to
10 be found?

11 A. Usually.

12 Q. Was there any legitimate reason that Mr. Picarella needed
13 to be away from his desk?

14 A. Not typically.

15 Q. What about e-mail and phone communications? Would
16 Mr. Picarella respond to those in a timely fashion?

17 A. Not typically.

18 Q. Did you receive complaints from others at HSBC about
19 Mr. Picarella's responsiveness?

20 A. Yes.

21 Q. Did you ever observe Mr. Picarella in a darkened office or
22 conference room speaking on his cellphone?

23 A. Often.

24 Q. What was your reaction to that?

25 A. Again, it was a difficult situation. I didn't feel -- I

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Karam - cross

1 didn't feel that it was appropriate for me to address it in
2 reprimanding. I like to be as flexible as possible. And I
3 like to give employees enough latitude to do what they need to
4 do. What we do is -- could be trying. We do a lot. We're
5 responsible for a lot. But it would be often that I'd find him
6 away, unresponsive, in closed or -- closed conference rooms
7 speaking on phones, on a personal phone.

8 Q. How would you describe Mr. Picarella's general demeanor and
9 attitude?

10 A. Not very good. The tenor -- when you're speaking to him,
11 he's very cordial, very, very nice. You can get along with
12 him. You can connect with him. But the communications that
13 came out via e-mail, when he wrote, the tone, the tenor in his
14 responses or his communications via e-mail often put people on
15 the defensive and turned off people. And I had received
16 complaints about that. And he as well.

17 Q. Was Mr. Picarella elusive in your view?

18 A. Very much so.

19 Q. Was Mr. Picarella sloppy in your view?

20 A. Yes.

21 MR. HUBBARD: I mean I just have to say that there's
22 just an awful lot of leading.

23 THE COURT: It's cross-examination. Go ahead.

24 Q. Was Mr. Picarella engaged in his job?

25 A. I can't -- I can't say that, no.

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Karam - cross

1 Q. Did you get the sense that Mr. Picarella was interested in
2 what was going on at work?

3 A. Not really. No.

4 Q. What are some of the characteristics that you would expect
5 to see in a senior vice-president at HSBC?

6 A. Senior vice-president is a business leader. It's a very
7 important role. It's the -- it's the level between managing a
8 business and managing lines of businesses and support. So it's
9 an important level where you gain a lot of skills, where you
10 are working with people on various different wavelengths,
11 various levels of seniority, some junior to you, some more
12 senior. And you have to be that bridge.

13 You learn to adapt to situations. You're responsible
14 for identifying issues. You're responsible for being proactive
15 about issues.

16 You also develop a network. You develop a network.
17 It's a role where you develop a network with very senior
18 managers. And it's a very, very important steppingstone in the
19 management structure typically at most banks, and a lot of
20 weight is put on it at HSBC. There's a good layer of senior
21 vice-presidents.

22 Q. Did Mr. Picarella embody those characteristics in your
23 view?

24 A. Not at all.

25 Q. Let's go to DX-228. This is in the black binder,

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Karam - cross

1 Mr. Karam.

2 Just let us know when you've reviewed the document,

3 Mr. Karam.

4 A. Okay.

5 Q. Would you briefly explain the client account which you are
6 describing in this e-mail?

7 A. Sure. One of the primary objectives that I had asked Mike
8 to take responsibility for was a forum where we would -- where
9 we would entertain business cases to bring on new clients to
10 the bank with a significant sales force. We had about 150 or
11 so sales people who were constantly receiving requests to open
12 accounts for new customers. There was a preexisting forum that
13 was very limited on the subset of customers' hedge funds that
14 Michael was responsible for. And after assuming
15 responsibilities I felt that it would be appropriate for Mike
16 to broaden that and take on additional responsibilities and
17 look at all clients, not just a specific segment of clients.
18 And it was a forum where we would -- we would support the sales
19 people to present business cases to open up new trading
20 relationships, new accounts with clients.

21 MS. LEVIN: If we could zoom in on the bottom of the
22 first page of Mr. Picarella's e-mail.

23 Q. Mr. Picarella says: No problem. I assume Pablo will
24 address and I'm there for adding color and answering any
25 questions?

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Karam - cross

1 Let's look at Mr. Karam's response.

2 Your response, Mr. Karam is: Although Pablo is
3 supportive, it would be best for you to be prepared to address
4 at the meeting since we own this. If he takes the lead, great.
5 I just think to move this forward we'll need to drive the
6 discussion.

7 Why did you write that to Mr. Picarella?

8 A. Again, I shouldn't have needed to. We had explained in the
9 initial meetings I had with him that part of my role as his
10 manager is to increase his profile within the bank. So this
11 was a great forum where dealing with senior managers we're
12 dealing with people from all various aspects of the bank and it
13 was a great forum for Mike to build that network, to work
14 through these issues. But at every juncture, even in this
15 relatively simple task I had to provide advice and guidance on
16 how to approach this from him. Sort of spoonfeeding him
17 through the actual objective.

18 Q. You also seem to be telling Mr. Picarella he needs to take
19 a leadership role at this meeting; is that correct?

20 A. Yes.

21 Q. Did you often have to tell Mr. Picarella that he should be
22 taking a leadership role on projects that he was responsible
23 for?

24 A. Yes. I had to remind him.

25 MS. LEVIN: Let's go to DX-243. Page eight.

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Karam - cross

1 Q. So, Mr. Karam, we're on page eight of DX-243. It's an
2 e-mail from you to Mr. Picarella dated August 8, 2013. You
3 state: Mike, I do not appreciate the tone of your note and am
4 disappointed that, if you were confused about your role, you
5 did not come to talk to me. The process to propose new client
6 relationships has not changed.

7 What are you referring to in this e-mail?

8 A. Again, three months into that objective of being the
9 coordinator of that forum Mike would continually throw
10 questions at the process and how he is involved and how things
11 work and who is responsible, all in an attempt to be elusive
12 away from this. And this is in response to a note where if I
13 recall correctly it was out to a senior salesperson. And the
14 tone of the e-mail, responding about a specific business case,
15 was really off-putting to a senior -- a senior sales manager,
16 someone that we're supposed to support.

17 So I had to remind him again of his tone and of his
18 lack of -- lack of initiative and needing him to -- to be
19 crystal clear that this is his responsibility and affirming
20 that that hasn't changed.

21 Q. Did Mr. Picarella often write e-mails whose tone you felt
22 was inappropriate?

23 A. Yes.

24 Q. Just going to the next paragraph. You state: Business
25 cases continue to be, and will continue to be, submitted to you

GC99PIC4

Karam - cross

1 for collection.

2 What was the issue about business cases that you're
3 referring to?

4 A. It may have been a specific client -- sales manager wanting
5 to onboard a new client and the business case may have come in
6 through another channel, maybe through myself or through
7 someone else. And three months after having very specifically
8 gave him responsibilities for his objective, here again I had
9 to go through and remind him of his responsibilities.

10 MR. HUBBARD: Can we go to the next e-mail at the
11 bottom of page seven.

12 Q. Mr. Karam, did you respond to Mr. Picarella and suggest
13 meeting in person to discuss?

14 A. Yes.

15 Q. What was Mr. Picarella's response?

16 A. Again he was being elusive, not being able to meet with me
17 to discuss this.

18 Q. So you had difficulty getting Mr. Picarella to respond and
19 actually schedule a meeting with you?

20 A. Often, yes.

21 Q. Would you have expected Mr. Picarella to be more responsive
22 to a meeting request from his direct manager?

23 A. Absolutely. Especially if he felt that there was confusion
24 or if there was something that he needed to address. I was
25 widely available and a lot of times it was me initiating the

GC99PIC4

Karam - cross

1 contact saying let's sit down and talk and not hide behind
2 e-mails and that sort.

3 MS. LEVIN: Let's go to page one. The first two
4 paragraphs.

5 Q. Did you ultimately meet with Mr. Picarella on or about
6 September 27, 2013?

7 A. Yes.

8 Q. In your e-mail you state: As discussed below are the
9 responsibilities expected of your role in the business
10 manager/COO community and position as an SVP. Listed below is
11 the minimum expected, from time to time there will be
12 additional responsibilities, and it is incumbent upon yourself
13 to be proactive to embrace those opportunities as a senior
14 member of the team.

15 What were you setting forth in this e-mail?

16 A. Baseline objectives of what I expected of him but then
17 again reconfirming to him that, again, much more -- as senior
18 vice-presidents we were mid level managers within the bank and
19 we had to take these as opportunities to chart our own course
20 and, again, expand the network, expand our responsibilities as
21 these situations arose.

22 Q. Did you feel that Mr. Picarella should have had any
23 confusion about what was expected of him as a senior
24 vice-president?

25 A. No. As a midlevel manager making it that far absolutely

GC99PIC4

Karam - cross

1 not.

2 Q. After receiving this e-mail should Mr. Picarella have had
3 any confusion about his specific job responsibilities?

4 A. I hope not.

5 Q. What is the monthly GMB submission?

6 A. It's a commentary that we would collect across the dealing
7 or across the many different product area and sales managers.
8 So we would collect commentary and it would be passed -- it
9 would be collated into a report. And that report would be
10 shared by senior management at executive committee meetings.
11 So it was a view of what was happening in the Americas and in
12 the region. And it would be shared with senior managers at the
13 executive committee meetings. And it also had a broader
14 distribution where it was being shared with the regulators,
15 with the regulators in the United Kingdom. We're an English
16 bank so we have regulators there. And this was commentary as
17 to revenue trends, client activity, issues that we're
18 experiencing in the region. And it was a forum where we were
19 raising those into the senior manager -- senior management team
20 in London.

21 Q. What was Mr. Picarella's role with respect to the GMB
22 monthly submission?

23 A. He would have to work with the sales managers in the region
24 to collect their feedback. It was very prescriptive. There
25 was four or five topics that they wanted addressed or they

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1 wanted answered. And he would work with the sales managers in
2 the region to collect that feedback. He would collate that
3 into a report. He would edit that report, proofread it as he
4 saw appropriate. And it was his responsibility to submit it.

5 Q. So it was really his project, correct?

6 A. Yes.

7 Q. How was Mr. Picarella's performance in connection with that
8 project?

9 A. Up until February of 2014 he was providing the monthly
10 submissions without issue.

11 I noticed that the submissions had terminated. I
12 didn't see submissions for -- I think it was like March or
13 April of that year. And I queried Mike as to why haven't we
14 put this submission through. And he had commented back to me
15 that the -- the requirement had changed and the person who he
16 was submitting this to in London no longer required it in this
17 form and they would collect it from other sources. So he felt
18 at the time that the requirement had gone away.

19 Q. Was his understanding accurate?

20 A. No.

21 Q. Why not?

22 A. Well subsequently someone had come back to Mike asking for
23 that report and Mike in essence responded back and said he's no
24 longer responsible for collating that report. And what that
25 person did was he escalated to me being his manager. And then

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Karam - cross

1 I had to work with him, work with Mike to navigate a solution
2 to provide this feedback to this person.

3 Q. Is there something at HSBC called the client governance
4 rationalization forum?

5 A. Yes.

6 Q. What is that?

7 A. I referred to it earlier. It's the forum where we review
8 collectively, as a business, we review new client onboards. So
9 clients that wanted to do business with HSBC, new clients, we
10 would look at them, review them, and we would prioritize what
11 resources we were going to dedicate to open up their accounts
12 in order for them to trade with HSBC.

13 Q. What was Mr. Picarella's role with respect to the client
14 governance rationalization forum.

15 A. He was responsible for working with the sales managers to
16 produce business cases. So we didn't have rationale as to why
17 we wanted to onboard specific customers. A couple they would
18 look at potential profitability, areas of focus on the client
19 where they -- which financial products they transacted. It was
20 important that the forum would review these cases and
21 collectively make a decision as to how we're going to
22 prioritize them as new business to the bank.

23 Q. How was Mr. Picarella's performance in connection with that
24 project?

25 A. Mediocre. There were times where he would cancel the

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Karam - cross

1 meetings ad hoc.

2 One specific time, which was quite embarrassing, was
3 that the meeting was on. We appeared into the conference room.
4 He didn't appear. He wasn't there. We attempted to have the
5 conference call facility. But we couldn't activate the
6 conference call facility because he had the pass code. So we
7 had people on the line waiting to be connected in the
8 conference call and we couldn't activate it. So somewhat
9 embarrassing. We had to go back and cancel the meeting after
10 the meeting had started, disrupting people's schedules. So not
11 very good.

12 Q. Did you receive complaints from others at HSBC regarding
13 Mr. Picarella's performance in connection with those meetings?

14 A. Yes.

15 Q. Did Mr. Picarella also have responsibility for something
16 called the give up project?

17 A. Yes.

18 Q. Would you describe what the give up project was for us?

19 A. Sure. It was an extension onto the client rationalization
20 forum. I've expanded his responsibilities to focus on a
21 specific piece of business. In give ups, the simplest way to
22 explain it is where another broker, another banker broker,
23 ourselves, enter into an agreement where the other broker
24 allows a customer, a third party customer, to transact on their
25 behalf. This is very prevalent in the marketplace and HSBC

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1 participates in this business. It's a pretty important
2 business because it allows HSBC to transact with a lot of
3 customers but not necessarily having direct relationships with
4 those customers. We would transact because they're acting as
5 an agent on behalf of a mutual broker, you know, someone like a
6 Goldman Sachs or a Citibank or a Morgan Stanley. So it allowed
7 us to access a marketplace and a fair amount of clients without
8 necessarily having direct relationships with those clients.

9 (Continued on next page)

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GC9TPIC5

Karam - cross

1 BY MS. LEVIN:

2 Q. Was there an issue with Mr. Picarella's performance in
3 connection with the give up project?

4 A. Yes.

5 Q. Would you describe that for us, please.

6 A. Sure. Over time HSBC accrued about 2,000 of these
7 relationships, and as time goes on some of the customers are no
8 longer relevant, some are no longer active, so we didn't do a
9 good job of maintaining that customer list. It was important
10 to do that because the bank was allocating resources on an
11 annual basis to review these customers and do some basic level
12 checking, so it was important to make sure the customers
13 were -- the population of customers, the amount of these
14 customers was tidy. And we wanted to get embarked on a project
15 to work with credit, work with other support areas within HSBC
16 to determine which of these customers were no longer active
17 with an attempt to close accounts out and make resources
18 available to new business.

19 Q. Was there an instance where Mr. Picarella escalated
20 information to senior executives in London and it later proved
21 that information was inaccurate?

22 A. Yes, during the assessment, when we were assessing these
23 relationships for foreclosure, he had encountered what he
24 perceived to be an issue, and on the back of that he took the
25 liberty to escalate the issue to senior management in London.

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Karam - cross

1 And it's not so much the issue of him escalating, we
2 all promote speaking up when we see something that is wrong.
3 That's not the issue. The manner in which he did it was a
4 little disturbing. He was very alarmist that things were out
5 of control and that there was unmanaged risk. So he had jumped
6 to -- rather than fact finding, getting a handle on the issue,
7 he jumped through and already rendered a verdict or rendered
8 judgment on an entire process.

9 And what is more disturbing, on the back end of this,
10 we did review this, there weren't any issues. People followed
11 proper protocols as related to those accounts. There were no
12 issues. And it was, again, a situation that was a little bit
13 embarrassing that we had to go back and explain ourselves to
14 senior management in London and deal with it.

15 Q. DX-250, page 5. Paragraph 3.

16 Mr. Karam, is this an email exchange regarding the
17 give up project we were just discussing?

18 A. Yes.

19 Q. On page 5 there's a paragraph that begins 3, is that a
20 paragraph that Mr. Picarella wrote to you?

21 A. I believe so, yes.

22 Q. Below it beginning "I viewed," is that your response that
23 you delineated in this email?

24 A. Yes.

25 Q. So Mr. Picarella writes: You and are both SVPs in the

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1 organization. I found your approach to the meeting yesterday
2 to be both confrontational and at times condescending.

3 Does that match your recollection of the meeting,
4 Mr. Karam?

5 A. No.

6 Q. You respond: I viewed 12/19 meeting as productive and
7 professional. And you later say: While you are correct we are
8 both SVPs, you report to me.

9 Were you surprised to have to remind Mr. Picarella
10 that he reported to you?

11 A. Very much so.

12 Q. Did you find Mr. Picarella's attitude to be insubordinate?

13 A. Yes.

14 Q. If you turn to page 2, middle two paragraphs, this is an
15 email that you sent to Mr. Picarella, correct?

16 A. Yes.

17 Q. And in the middle of the first paragraph, you write: In
18 fact, I confirmed with credit that the potential credit breach
19 that you highlighted in your email -- redacted -- did not
20 result in any breach as you surmised.

21 Why is that significant?

22 A. It's significant because when he escalated the issue to
23 senior management in London, bypassing a lot of people that
24 could have helped him better understand the issue, when it was
25 escalated he had made the assumption or he had made the comment

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Karam - cross

1 that we have unmanaged risk. And it was very alarmist
2 language, but again, at the core of it, the issue -- there was
3 no issue. People followed the proper protocol as it related to
4 this business and that specific transaction.

5 Q. The next paragraph, there's a reference to GUP, is that an
6 acronym for give up project?

7 A. Yes.

8 Q. You state: The initial guidance from the client
9 rationalization committee was quite clear to review and
10 validate the GUP customer base. You still have yet to collate
11 a listing of the customer population that is validated for
12 those accounts that are active and have the support of a GM
13 business line.

14 Mr. Karam, how would you rate Mr. Picarella's
15 performance in connection with the give up project?

16 A. Failure.

17 Q. Did Mr. Picarella also work on something called the
18 Greenwich survey?

19 A. Yes.

20 Q. What is the Greenwich survey?

21 A. Greenwich is a survey company that we pay a fee to and they
22 provide us intelligence around the marketplace. They review
23 market share, how relevant HSBC is in specific market and
24 specific clients. So it's very valuable information that we
25 get back from the survey company, and we can gauge the progress

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1 we're making as a business.

2 Q. Does HSBC have to pay to participate in the Greenwich
3 survey?

4 A. Yes, it's an expensive survey, it's about \$400,000 per
5 annum.

6 Q. \$400,000 per year?

7 A. Yes.

8 Q. What was Mr. Picarella's responsibilities in connection
9 with the Greenwich survey?

10 A. He was the coordinator of working between the sales
11 managers, the sales teams and Greenwich. He was the liaison.
12 The Greenwich survey was very much dependent on us producing to
13 them a list of customers that we wanted them to interview. And
14 once they interview those customers they would look at the
15 entire population of banks that participate in the survey and
16 then they rate us as to how we compare against our competitors.
17 So his role was to produce and give a listing of relevant
18 customers to Greenwich in order for them to focus their
19 interviewing on.

20 Q. Was Mr. Picarella's performance satisfactory in your view?

21 A. Not at all.

22 Q. Why not?

23 A. A couple of things. Early on when the Greenwich survey was
24 assigned to him it took him three or four months before he
25 realized that he was responsible for it. He would continually

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1 defer the people from Greenwich or people asking questions
2 about this to other people within the bank. So he never took
3 ownership for the survey.

4 And because of that, he missed a critical deadline in
5 the December of 2013. We needed to produce a listing of
6 customers to them in December, and it would take them a few
7 months to do the survey, and then we would in turn get the
8 results in the spring or summer of the following year. So we
9 missed the deadline, and by missing the deadline we had to take
10 another resource off of the desk who is a part of the team to
11 focus on, again, firefighting, working to correct that error.

12 Q. 236.

13 Mr. Karam, I'm going to ask you about page 1 of this
14 email, your email to Mr. Picarella dated August 6, 2013. In
15 the top email: I understand you have been communicating that
16 the process to propose new client relationships has changed and
17 that you are no longer responsible for collecting business
18 cases for review and managing this pipeline. Not sure where
19 this confusion is emanating, since I haven't implemented any
20 changes to this process. Just to be clear, a new client
21 business case process will continue to be managed by yourself.

22 Had Mr. Picarella's responsibilities with respect to
23 new client relationships been taken away from him?

24 A. No, not at all.

25 Q. Should Mr. Picarella have been confused about whether he

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1 was responsible for new client relationships?

2 A. Absolutely not. Again, we have plenty -- there's a lot on
3 our plates to do, and to continuously come back and revisit
4 very simple responsibilities that Mr. Picarella was responsible
5 for was very frustrating.

6 Q. At any point from the time you started supervising him
7 until his termination, were Mr. Picarella's responsibilities
8 regarding new client relationships ever taken away from him?

9 A. No.

10 Q. Let's go to DX-205.

11 A. I don't have 205 in this book.

12 Q. We'll come back to that?

13 A. 205?

14 Q. 205. It starts at 228. They may not be in order.

15 We can pull it up on the screen, page 4.

16 Who is Zach Howell?

17 I apologize, Mr. Karam.

18 PX-205. Who is Zach Howell?

19 A. Zach is a sales person on our credit sales desk.

20 Q. Mr. Picarella sends Mr. Howell an email: Hi Zach, I would
21 like to make clear the facts and timeline.

22 Was this email in reference to a new business or new
23 client on-boarding, do you recall?

24 A. I believe so, yes.

25 Q. Then if we go to the next response it's a response from

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1 Mr. Tom Crystal. Who was Tom Crystal?

2 A. Tom was the senior manager that we hired to run the high
3 yield credit initiative. It was a new business for HSBC, and
4 Tom was the senior person and well regarded in the marketplace,
5 and we hired him to run that business for us.

6 Q. Was he a senior executive at HSBC?

7 A. Yes, he was a managing director.

8 Q. What was Mr. Crystal's reaction to Mr. Picarella's email?

9 He states he found it offensive, doesn't he?

10 A. Yes.

11 Q. Is that generally a positive statement when a senior
12 executive finds someone's email offensive?

13 A. Could I hear the beginning?

14 Q. Is it generally a good thing when a senior executive finds
15 an email offensive?

16 A. Absolutely not. Our role is to facilitate business, not to
17 obstruct. We're here to help salespeople to facilitate and
18 conduct business, so having that judgment cast upon us and the
19 team is not good at all, no.

20 Q. Could we go to page 2.

21 This is an email response that you sent to
22 Mr. Picarella on September 23, 2013, correct?

23 A. Yes.

24 Q. And you state: Regardless of who was involved in an
25 original on-boarding request or meeting, part of your role as a

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1 sales business manager is to assist sales with on-boarding
2 requests and issues, in this case Zach and Tom. Please look
3 into the status of each of the outstanding names as a priority
4 and respond with an update. The original request from Zach was
5 straightforward and should be easy to answer, but if you need
6 direction, please call me.

7 Would you have met with Mr. Picarella if he needed
8 more direction from you regarding this?

9 A. Sure.

10 Q. Then if we go to page 1, Mr. Picarella forwards your email
11 to Mary Bilbrey and Stuart Alderoty, copying you. Do you see
12 that?

13 A. Yes.

14 Q. Can we look at the first two paragraphs.

15 Mr. Picarella states: Mike Karam has not met with me
16 or spoken with me in person in approximately three months or
17 about the time of my filing with the EEOC.

18 Is that correct, had you been avoiding Mr. Picarella
19 for three months?

20 A. No.

21 Q. Had you been in regular contact with Mr. Picarella?

22 A. Yes.

23 Q. In fact, you were actively trying to schedule a meeting
24 with Mr. Picarella when he sent this email, weren't you?

25 A. Yes.

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1 Q. The second paragraph reads: In the same time frame of my
2 filing with EEOC Mike Karam participated in continued
3 retaliation against me by assuming my role of coordinating
4 business case approvals and prioritization with Pablo
5 Pizzimbono and the relationship managers.

6 Do you see that?

7 A. Yes.

8 Q. Had you assumed Mr. Picarella's role of assuming -- of
9 coordinating business case approvals?

10 A. Never.

11 Q. Did you provide Mr. Picarella with feedback on his
12 performance when you were his manager?

13 A. Yes, frequently.

14 Q. How frequently?

15 A. We had a standing catch-up meeting where we would meet once
16 every three or so weeks if we had something to discuss. And
17 also as issues came about, as in these emails, if there was
18 something that I noticed that needed to be addressed I would
19 address it, and it was a constant continual feedback.

20 Q. You would have catch-up meetings with him, correct?

21 A. Yes.

22 Q. Who had requested those catch-up meetings?

23 A. Mr. Picarella had.

24 Q. DX-245.

25 Mr. Karam, is DX-245 Mr. Picarella's 2013 mid-year

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1 performance review?

2 A. Yes.

3 Q. Did you prepare this review?

4 A. Yes.

5 Q. Go to page 4 with the rating.

6 What was Mr. Picarella's performance rating at
7 mid-year 2013?

8 A. Three.

9 Q. What did a rating of three mean at HSBC?

10 A. It was on a scale, I believe it was a one -- at the time
11 the scale was one to five, with three being in the middle of
12 the pack.

13 Q. If someone receives a three, does that mean there are no
14 issues with their performance?

15 A. Not at all. A three, again, is middle of the pack, and
16 there's going to be things that we all would work on to improve
17 ourselves, but not necessarily.

18 Q. Let's take a look at your comments. Specifically you
19 mention that Mr. Picarella's responsibilities fall short of
20 those that are typically expected of a SVP in the COO business
21 manager's role. The business is committed in working with Mike
22 to take full advantage of opportunities as they arise, but this
23 is very much mutual and Mike should manage his career
24 accordingly.

25 Why did you include this comment in Mr. Picarella's

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1 performance review?

2 A. We discussed establishing his objectives. They fall short
3 of someone who is a mid-level senior vice president, mid-level
4 manager, senior vice president. And this was a way for me to
5 emphasize the point to him that the specific responsibilities
6 he's working on are fine, but that's the bare minimum, that we
7 needed him to expand the scope of what he would be responsible
8 for and to begin to behave in accordance with his title and his
9 rank.

10 Q. DX-285. Sorry, 258.

11 Mr. Karam, is DX-258 Mr. Picarella's year-end
12 performance review for 2013?

13 A. Yes.

14 Q. Did you prepare this review?

15 A. Yes.

16 Q. Let's look at your comments. What did you mean by: Mike
17 has demonstrated mixed results with the agreed objectives.

18 A. We had some successes when we sat down and did this review.
19 The review of the objectives were that he functioned and he was
20 good at them, and others where he has fallen short again of his
21 responsibilities.

22 Q. You also write: Mike demonstrated a weakness in
23 proactively devising meaningful solutions to tasks which has
24 required intervention and guidance that should have been
25 unnecessary.

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1 What are you referring to there?

2 A. He would often raise questions about navigating or trying
3 to work through problems, and I felt that as a senior vice
4 president I was spending a lot of time working with him to
5 devise solutions, and this is stuff that is expected of a
6 person in that position.

7 Q. If we go to the second page in the comments. You note: A
8 standing catch-up session has been established to assess
9 progress weaknesses and hurdles to overcome.

10 Did you hope that these regularly scheduled catch-up
11 meetings would help Mr. Picarella improve his performance?

12 A. Absolutely.

13 Q. Did they improve his performance?

14 A. Generally no.

15 Q. How does the objective setting process work at HSBC?

16 A. Objectives are -- they don't -- they're expectations of how
17 we are to encounter our responsibilities. They don't end at
18 the end of the year and new objectives get established at the
19 beginning of the year. They are fluid. They continue during
20 your tenure.

21 Typically what happens at the beginning of the year
22 we'll get objectives from our senior managers, they start with
23 the chairman of the board, to establish objectives that he or
24 she want to focus on for the coming year, and that gets
25 filtered down. From our perspective we look at them and say:

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1 How are going to meet those objectives? So we establish
2 objectives for ourselves how we are going to meet them.

3 So it's an interesting dynamic where you have a view
4 of group responsibility, senior management responsibilities or
5 commitments, I should say, and then objectives are our
6 responses to them.

7 Q. Did you have difficulty getting Mr. Picarella to set his
8 objectives in 2014?

9 A. Very much so.

10 Q. Was he resistant to setting his objectives?

11 A. I'm not sure if it was resistance, but he wouldn't -- I
12 couldn't break that barrier for him to have a thought about
13 what he felt would be things he wanted to focus on and
14 objectives for the coming year.

15 Q. Were you surprised to have such difficulty getting a senior
16 vice president to set his objectives?

17 A. Totally. And this is an opportunity -- personally, the way
18 I view this and what I counseled Mike on, these are
19 opportunities also for us to lay a marker in the sand to say
20 these are things we want to be held responsible for. And we
21 charted our own course, and it helped us a lot in developing
22 our own careers in being able to have focus on things that were
23 important to us. So I was looking at these as opportunities.
24 Mr. Picarella didn't have that view about this, and it was a
25 very, very difficult -- very, very difficult for him to

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1 establish objectives.

2 Q. Do you recall when Mr. Picarella's objectives for 2014 were
3 actually finalized?

4 A. I don't remember him establishing them. We may have had to
5 give him some boilerplate objectives of those that would be
6 required of people in that position, very general.

7 Q. And in 2014 approximately how much of the workday did
8 Mr. Picarella spend on work?

9 A. It's hard to guesstimate, but a minimum.

10 Q. More or less than ten percent of his day?

11 A. I would say either side of ten percent.

12 Q. Was that because work had been taken away from him?

13 A. Not at all.

14 Q. Would you have preferred that Mr. Picarella was a
15 productive, engaged member of your team?

16 A. Absolutely. Our responsibilities in our role are
17 significant. We're supporting 150 salespeople, so our plates
18 in the role are full. And there's plenty of work to do, plenty
19 of exposure to be had; just requires people to have initiative
20 and wanting to progress their careers and be able to develop
21 some skill sets to look further into the future for more
22 responsibilities. And he never expressed any willingness to
23 expand that.

24 Q. I want to ask you about operational risk.

25 Was operational risk a strength of Mr. Picarella's?

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1 A. No.

2 Q. How did his operational risk skills compare to others at
3 HSBC, in your view?

4 A. I think they were quite poor. Mike -- Mr. Picarella didn't
5 have a good handle on the relevance of operational risk and how
6 it translated into practical issues in the business. And being
7 blind somewhat to this takes away our ability to be proactive
8 and to look forward and to be able to project the issues on the
9 horizon. So it's a very, very important discipline, and it's
10 one that Mr. Picarella had no clue about.

11 Q. Please take a look at DX-268.

12 This is Mr. Picarella's 2014 mid-year performance
13 review, correct?

14 A. Yes.

15 Q. Did you prepare this review?

16 A. Yes.

17 Q. Look at the comments, please.

18 What was Mr. Picarella's rating at mid-year 2014?

19 A. Off track.

20 Q. What does an off track rating mean?

21 A. HSBC adopted, in 2014, a pass/fail as a mid -- for the
22 mid-year reviews. So we were on track or off track where we
23 failed. And given his shortcomings in his responsibilities I
24 had no choice but to rate him as off track or a fail.

25 Q. If someone is given an off track rating, are they required

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1 to be given a formal performance improvement plan?

2 A. I'm not sure.

3 Q. Prior to receiving this review, had Mr. Picarella been
4 informed of the deficiencies in his performance?

5 A. Yes.

6 Q. Had Mr. Picarella been given the opportunity to improve his
7 performance?

8 A. Absolutely.

9 Q. Had Mr. Picarella improved his performance in any way?

10 A. No, his performance actually degraded during the course of
11 the year.

12 Q. Did you have a meeting with Mr. Picarella on or about
13 November 21st, 2014, where you reviewed this performance review
14 with him?

15 A. Yes.

16 Q. Did you threaten Mr. Picarella during that meeting?

17 A. No.

18 MS. LEVIN: Pull up the demonstrative.

19 Q. Did you yell at Mr. Picarella during that meeting?

20 A. No.

21 Q. Did you act in a physically threatening manner towards him?

22 A. Absolutely not.

23 Q. Did you stick your finger in his face and point at him?

24 A. No.

25 Q. We have a demonstrative here. Is this the type of room

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Karam - cross

1 where you held the mid-year review with Mr. Picarella?

2 A. Yes, we would meet in the office. That's the precious
3 metals office at HSBC. So it was used by the precious metals
4 business, and that's the office that we would typically meet in
5 for catch-up sessions and reviews.

6 Q. And it's an office that has a glass wall that anyone
7 walking by could see what was going on in the room?

8 A. Oh, yes. On the other side of the glass wall is a trading
9 floor with about 100 desks, open desks, not cubicles, like a
10 call center.

11 Q. In 2014 did you file a complaint with human resources
12 regarding Mr. Picarella?

13 A. Yes.

14 Q. What was that complaint concerning?

15 A. Late 2014 my name appeared in the New York Post in an
16 article relating Mr. Picarella's review, and it named me
17 personally there and there's some derogatory comments about me
18 personally. And I felt it was appropriate that I -- I was
19 concerned about that, that my name was associated with this in
20 the public press, and I asked human resources to produce or to
21 have an investigation, and I wanted to know who the source of
22 that -- the purpose of that, the source around that.

23 Q. The New York Post article related information concerning
24 that November 21st, 2014 review meeting that you had with
25 Mr. Picarella, correct?

GC9TPIC5

Karam - cross

1 A. Yeah, there are details about the actual review that were
2 in the press, which was very troubling to me. I do maintain
3 client -- the employee-manager confidentiality is very, very
4 important, and here in the New York Post there was commentary
5 about the review itself with an employee, and then some
6 derogatory stuff about myself and my behavior. So it was very
7 troubling to me personally and professionally.

8 Q. Was anyone else present for that review meeting aside from
9 Mr. Picarella and yourself?

10 A. No.

11 Q. Did you believe that Mr. Picarella had likely discussed the
12 review meeting with the New York Post?

13 A. Well, there were only two of us in the room, and I know it
14 wasn't me, so I knew it had to have been him.

15 Q. After Mr. Picarella filed a complaint with human resources
16 regarding the review meeting, he was working from home,
17 correct?

18 A. Yes.

19 Q. But in fact he didn't have access to log into the HSBC
20 computer system from home, did he?

21 A. No, initially he was having technical issues.

22 Q. Approximately how long was it before he brought to your
23 attention that he was unable to work from home because he
24 couldn't access the system?

25 A. About three weeks.

GC9TPIC5

Karam - cross

1 Q. So there was a three-week period where Mr. Picarella had no
2 access to the HSBC computer systems when he was supposed to be
3 working from home?

4 A. Correct.

5 Q. How could Mr. Picarella have been working from home if he
6 didn't have access to the HSBC system?

7 A. He had limited use of a Blackberry, but again, it doesn't
8 lend itself well to too much.

9 Q. Why did you recommend the termination of Mr. Picarella's
10 employment?

11 A. Again, beginning in say in mid 2014 his performance had
12 begun to degrade. We had to deal with some substantive issues
13 where he had raised the alarm bells about the give up process,
14 canceling meetings, and the behavior just became degraded going
15 into the event, and there was there was a point where I had no
16 choice but to recommend termination. It was that point where I
17 didn't feel that we were connecting where I could help him come
18 along or to rehabilitate his career with us.

19 MS. LEVIN: May I have one moment, your Honor?

20 (Pause)

21 Q. Mr. Karam, you had a discussion with Susan Roskell and
22 Didier Descamps regarding Mr. Picarella's termination, correct?

23 A. Yes.

24 Q. During that meeting did you share information with them
25 regarding Mr. Picarella's performance and what you had observed

GC9TPIC5

Karam - redirect

1 regarding Mr. Picarella's performance?

2 A. Yes.

3 Q. Did you retaliate against Mr. Picarella in any way?

4 A. Absolutely not.

5 MS. LEVIN: No further questions, your Honor.

6 THE COURT: Any redirect?

7 MR. HUBBARD: Yes, your Honor.

8 THE COURT: Okay.

9 REDIRECT EXAMINATION

10 BY MR. HUBBARD:

11 Q. Mr. Karam, you have the books there with the spiral
12 bindings on them?

13 A. Yes.

14 Q. When you began your examination by counsel, defense
15 counsel, you were asked about your knowledge of Mr. Picarella's
16 relationship with Ms. Jenner.

17 Do you recall being asked that question and giving an
18 answer to it?

19 A. Yes.

20 Q. My recollection is you said that -- let's take a look at
21 Exhibit 190, please. Sorry, it was not 190, it was an email
22 about the being marginalized. What's that number?

23 193. Remember we looked at that earlier and you made
24 some comments here about -- your counsel asked you about this
25 comment you made about if he responds we'll marginalize his

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Karam - redirect

1 behavior. And my recollection is you said that you believe
2 Ms. Jenner here did not get along very well with Mr. Picarella
3 and she was agitated by him.

4 A. I believe so, yes.

5 Q. Pick up Exhibit 190 in front of you there, book number 2.

6 A. 190?

7 Q. Yes, sir.

8 Where did you get the information from about
9 Mr. Picarella's relationship with Ms. Jenner in May of 2013?

10 I didn't give you a page yet.

11 A. Repeat the question, please.

12 Q. Where did you get the information about Mr. Picarella's
13 relationship with Ms. Jenner?

14 A. Just through dialogue, anecdotal, with Ms. Jenner.

15 Q. Turn to Exhibit 190 with me, please.

16 Turn to -- this exhibit you see on the first page is a
17 year end 2012 review by her of Mr. Picarella when she was
18 managing him, right?

19 A. It appears so. I don't know.

20 Q. And the date on it, the discussion date she had with him
21 for this was May 13, 2013. That was about the time you were
22 writing that chat email, right?

23 You can see the date.

24 A. What was the --

25 Q. The date, May 13, 2013?

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Karam - redirect

1 A. I'm --

2 Q. The document says she discussed this with him on May 13,
3 2013, does it not?

4 A. That's what it appears, but I wasn't part of this.

5 Q. I understand. She says in this review that in receiving
6 feedback from various stakeholders in the banks selected by
7 Mike and myself, Mike is an easy person to work with, he is
8 found to be professional and realistic, and good partner to CMV
9 and COBAM.

10 She writes that, doesn't she?

11 A. I don't know.

12 Q. Can you read it?

13 A. I can read it. This is not my review.

14 Q. I didn't ask that, sir. I said that's what she wrote,
15 Ms. Jenner.

16 THE COURT: You have answer the question yes or no.
17 Did Ms. Jenner prepare that review?

18 THE WITNESS: I don't know.

19 THE COURT: Okay. That document appears to be
20 prepared by Ms. Jenner?

21 THE WITNESS: It appears to be, yes.

22 THE COURT: And the language on there states what has
23 counsel said?

24 A. What page?

25 Q. It's on the last page, sir, next to last page, right under

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Karam - redirect

1 three strong.

2 A. Right.

3 Q. So Ms. Jenner said nothing in that review about having any
4 difficulty meeting with Mr. Picarella at that time, did she?

5 A. No.

6 Q. Let me ask you a couple of questions about the mid-year
7 2013 review that you did. Turn to tab 211.

8 Look at the first page of 211, it's the top page, you
9 see there's a mid-year review there prepared by you?

10 MS. LEVIN: Your Honor, I object, this is not in
11 evidence.

12 MR. HUBBARD: I move the admission of 211, please,
13 your Honor.

14 THE COURT: I believe 211 is in.

15 MR. HUBBARD: It is in.

16 THE COURT: I believe it's in.

17 Go ahead.

18 Q. Mr. Karam, this is a 2013 mid-year review prepared by you,
19 right?

20 A. Yes.

21 Q. And you have the discussion with Mr. Picarella about this
22 review on December 10 of 2013?

23 A. Yes.

24 Q. And in this review you rated him three strong?

25 A. Yes.

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Karam - redirect

1 Q. And you did the same thing, sir, did you not, when you
2 rated him in May of 2014?

3 A. I believe so, yes.

4 Q. And not one single time when you did that did you make any
5 critical comments about him like you made here this afternoon?

6 A. That's not true.

7 Q. In those reviews -- in those reviews, did you make any of
8 the types of critical comments you made here this afternoon?

9 A. Paragraph two on this review.

10 Q. You're talking about his responsibilities falling short?

11 A. Correct.

12 Q. You have been on the stand for an hour and you have been
13 talking about the tone and the method and the fact that
14 everything he did was poor. You didn't say any of that in this
15 review, did you?

16 A. This review marks the period for the mid year, and a lot of
17 those issues -- again, the beginning of the relationship was
18 okay, things were progressing. We expanded his
19 responsibilities. It really didn't degrade until late 2013
20 into 2014.

21 Q. That wasn't my question on either one of those.

22 A. It wouldn't have been appropriate to raise the issues that
23 ensued in 2014 on a review that was dated in 2013.

24 Q. Did you modify any of those reviews?

25 A. I'm sorry?

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Karam - redirect

1 Q. Did you modify the three strong on any of these reviews by
2 modifying the word strong or modifying the number three that
3 you gave?

4 MS. LEVIN: Objection.

5 THE COURT: Can you rephrase the question?

6 MR. HUBBARD: Yes, I'm wondering if he did anything --

7
8 THE COURT: When you say "modify," what do you mean,
9 counsel?

10 Q. Did you give him -- when you wrote three strong, did you
11 write down anything beside it, like you said earlier, that
12 would detract from that rating?

13 You said earlier there was some three strongs that
14 were better than others. Did you do anything to modify that
15 rating at the time you gave it? Did you write plus, minus,
16 anything on it?

17 THE WITNESS: May I answer?

18 THE COURT: Is the question did he put a plus or minus
19 next to three strong?

20 MR. HUBBARD: Yes.

21 THE COURT: Did you put a plus or minus next to three
22 strong?

23 THE WITNESS: That's not possible.

24 THE COURT: You did not put a plus or minus next to
25 three strong?

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1 THE WITNESS: You can't. The system doesn't allow it.

2 MR. HUBBARD: That's all.

3 THE COURT: Thank you. The witness is excused.

4 Okay. Members of the jury, I want you to take a
5 five-minute recess. We're going to be breaking soon. I need
6 to discuss some scheduling things with counsel. Don't discuss
7 the case with anyone else or amongst yourselves.

8 (Continued on next page)

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1 (Jury not present)

2 THE COURT: So counsel, I want to check in with you.
3 My plan is to dismiss the jury for the day and tell them to
4 come back Monday at 9:30. But I wanted to find out from
5 counsel in terms of my instructions to them, typically my
6 instructions to them at the end of the day have simply been not
7 to discuss this case with anyone, don't let anyone discuss this
8 case with you.

9 There was one day, the day before yesterday, where I
10 gave them some additional instructions about reading things in
11 the paper. Do counsel wish me to give that more complete
12 instruction regarding the newspapers before we discharge for
13 the weekend or not? What's counsel's view on that?

14 MR. HUBBARD: Your Honor, I think it might be helpful
15 to gave the same instruction but remind them that it's the
16 weekend, and more time between today and when we meet again on
17 Monday, and just remind them that they will be exposed to more
18 news, to be particularly careful not to read anything about
19 case -- read or see anything about the case.

20 THE COURT: Defense counsel?

21 MR. JACKSON: I think the Court's previous instruction
22 is appropriate.

23 THE COURT: Which one, the one that I have given most
24 days or the one I gave the day before yesterday is my question.

25 MR. JACKSON: I think the one that the Court has given

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1 most days is really fine. The only thing I would add is
2 certain days you have included not to research anything about
3 the parties, the lawyers, et cetera. I think that's
4 appropriate.

5 The other thing I ask, your Honor, is the Court
6 intending -- as we come to the end of the week it may be
7 helpful if we give the jury some hope that we are on schedule,
8 and I don't know if the Court was intending to do that. I
9 think it would be appropriate because I think we are actually
10 right on schedule.

11 THE COURT: Okay. Before we do that let me find out
12 what plaintiff's counsel's position on what defense counsel
13 suggested in terms of my instructions at the end of the day.

14 MR. HUBBARD: That's fine.

15 THE COURT: I will tell them not to discuss the case
16 with anyone and not to do any other independent research.

17 MR. HUBBARD: That should be fine.

18 And what's plaintiff's counsel's position on -- I
19 guess first from the defense counsel, what is it you want me to
20 say? I don't want to make a promise that I can't keep. What
21 is it you want me to -- you want me to simply reassure them
22 that we're on schedule?

23 MR. JACKSON: Yes, your Honor. I don't want the Court
24 to get into specifics, I just think that psychologically it is
25 helpful to the jurors at the end of the week to know, as they

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1 go into the weekend, to let the jurors know things are on
2 schedule, we expect the case to proceed efficiently next week,
3 something like that. Whatever the Court thinks is appropriate.

4 THE COURT: Plaintiff's counsel, any view on that?

5 MR. HUBBARD: I don't think it hurts anything, Judge.

6 My only question is whether we are able at this point
7 to predict to them when we might conclude, but I don't think
8 there's anything that we can do other than to stick to the
9 schedule you gave. That seems to be a reasonable projection.
10 That means we predict we're on the same schedule.

11 THE COURT: Okay. If counsel both want me to say to
12 the jury that we're on schedule, I will simply say that.

13 I think the jury gets the feeling certainly a lot more
14 momentum has picked up in terms of the pace of the trial in the
15 last couple of days and certainly today. But I will tell them
16 that as well, I will tell them that we are on schedule and I
17 will see them at 9:30 on Monday.

18 Anything else in terms of what I say to the jury?

19 MR. HUBBARD: No, sir.

20 THE COURT: I will tell them to have a great weekend
21 or something like that.

22 Let's bring in the jury.

23 (Jury present)

24 THE COURT: So members of the jury, we are finished
25 for the day. I want to let you know that we are on schedule.

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1 I'm going to dismiss you for the day. I ask you to come back
2 on Monday at 9:30, and we'll work no later than 5 o'clock on
3 Monday.

4 In the meantime, as always, don't do any independent
5 research about any issues pertaining to this case, don't do any
6 research about any parties involved in this case, don't discuss
7 this case amongst yourselves or with anyone else, don't allow
8 anyone to discuss this case with you, and have a wonderful
9 weekend. We'll see you at 9:30 on Monday.

10 (Jury not present)

11 THE COURT: Any objection to my instruction to the
12 jury? Did I forget anything?

13 MR. JACKSON: No, it's fine.

14 MR. HUBBARD: Everything is fine.

15 THE COURT: Great. Everyone be seated.

16 My plan at this point is -- and I will hear from
17 counsel -- to let counsel go, ask counsel to perhaps -- let me
18 find out, who do we have on tap for Monday? There's one more
19 plaintiff's witness, and then who do we have from the defense
20 on Monday?

21 MR. JACKSON: So after Ms. Roskell, who would be the
22 last witness for the plaintiffs, we expect to call four
23 witnesses, that would be Ms. Malanga, Mr. Pizzimbono,
24 Ms. White, and Mr. DeLuca. I believe that -- I'm hopeful we
25 will be able to finish all the witnesses on Monday, since I

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1 think Ms. Roskell is a very short witness, Mr. DeLuca and
2 Mr. Pizzimbono and Ms. White, while longer, is not much longer
3 than any of the witnesses. They're both shorter than the last
4 witness and probably closer somewhere between what we heard
5 from Mr. Descamps and this last witness, so I think we're very
6 optimistic we could finish the whole case on Monday.

7 THE COURT: Okay. And I assume that Ms. Malanga's
8 testimony will be extremely short. Am I off there?

9 MR. JACKSON: I think we're going to -- we were
10 anticipating her as a plaintiff's witness, and we're going to
11 spend a little bit of the weekend evaluating just how much we
12 need from Ms. Malanga, but we are definitely going to make it
13 as tight as possible.

14 THE COURT: It may make sense -- and I will hear from
15 counsel -- for us to perhaps for us to convene at perhaps 9:00
16 on Monday if we want to have further discussion on the
17 submission from defense counsel last evening regarding
18 Mr. DeLuca's testimony and these Sametime Chats as they relate
19 to that.

20 I will let counsel know my initial inclination is
21 still the same. My leaning is still that the content of those
22 Sametime messages certainly may be admissible, but the actual
23 documents I still do not believe are business records, and
24 certainly that foundation has not been laid yet. So I will
25 give counsel -- that's my inclination. We can discuss it

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1 further Monday at 9:00.

2 Counsel, have any other thoughts on that they want to
3 share? From plaintiff?

4 MR. HUBBARD: No, your Honor.

5 THE COURT: From defendant?

6 MR. JACKSON: No, I think discussing it now wouldn't
7 be appropriate, your Honor.

8 THE COURT: Okay.

9 MR. JACKSON: Your Honor, just in contemplation of the
10 schedule Monday, if we are able to conclude the case in terms
11 of the witnesses, the presentation of witnesses on Monday,
12 would it be the Court's inclination to have the charge
13 conference on Monday evening and summation on Tuesday?

14 THE COURT: My inclination is -- if we're able to
15 compete all the witnesses on Monday, my inclination would be
16 that I provide counsel our draft jury charge Monday evening and
17 we have a charge conference Tuesday morning and then go into
18 summations Tuesday morning. That would be my anticipated plan,
19 but I'm open to other suggestions if counsel have another view
20 on things.

21 MR. HUBBARD: That sounds like a good plan. One thing
22 is that we may have a small bit of rebuttal testimony related
23 to Mr. Karam this afternoon, but certainly --

24 THE COURT: I don't know what it would be, but
25 rebuttal testimony will probably not drastically change the

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1 charge.

2 MR. HUBBARD: No, sir.

3 THE COURT: That will be the plan, but that's my
4 anticipation, that assuming we finish -- or maybe even if we
5 don't finish, it might be helpful to give counsel our draft
6 jury charge Monday evening so you can look over it and be
7 prepared for a charge conference Tuesday morning. If we do
8 that, I would start the charge conference sometime around 9:00
9 Tuesday morning, we give the jury a little bit of break and ask
10 the jury to come in perhaps 10:00, 10:30, and go into
11 summations.

12 MR. JACKSON: Makes sense, your Honor, to us.

13 The only question we would ask on that, just in terms
14 of scheduling, is if the plaintiff's counsel would be willing
15 to provide to the Court their projection of how long they
16 anticipate the summation will be.

17 THE COURT: Well, I don't know if we need that now,
18 but we'll cross that bridge when we get to it.

19 Have a good weekend.

20 MR. HUBBARD: Same to you, Judge, thanks.

21 (Adjourned to December 12, 2016 at 9:00 a.m.)
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23
24
25

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